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REPORTER'S RECORD

VOLUME 38 OF 44 VOLUMES

TRIAL COURT CAUSE NO. 07-CR-885-B

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STATE OF TEXAS : IN THE DISTRICT COURT

VS : 138TH JUDICIAL DISTRICT

MARIA ELIZABETH LUCIO : CAMERON COUNTY, TEXAS

- - - - - x

JURY TRIAL - PUNISHMENT PHASE - DAY 7

On the 10th day of July, 2008, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable **ARTURO C. NELSON**, Judge Presiding, and a petit jury, held in Brownsville, Cameron County, Texas.

Proceedings reported by computerized stenotype machine.

FILED IN
COURT OF CRIMINAL APPEALS

AUG 06 2009

Louise Pearson, Clerk

ORIGINAL

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Certified Shorthand Reporter

P R O C E E D I N G S

THE COURT: Let's bring the jury in.

THE BAILIFF: All rise for the jury.

**(Jury present, defendant present at 9:05
a.m.)**

THE COURT: Again, I remind you if you need a break or whatever, make a sign and let me know or tell the bailiff. No problem.

This is Case Number 07-CR-885-B, State of Texas versus Melissa Elizabeth Lucio. Let the record reflect that the defendant is present along with her two counsel, and the State is being represented by Mr. Villalobos and Mrs. De Ford.

Mr. Padilla, would you continue with your cross-examination.

CROSS-EXAMINATION

BY MR. PADILLA:

MR. PADILLA: Thank you, Your Honor.

Q Good morning, Mrs. Villanueva.

A Good morning.

Q You are the same witness who was testifying here yesterday, correct?

A Pardon me, sir?

Q You're the same Ms. Villanueva who was testifying here yesterday?

1 A Mrs. Villanueva, yes, sir.

2 Q Mrs. Villanueva, if I raised my voice to you
3 yesterday, I apologize for doing that. No intent to -- if
4 you felt like I was attacking your professional
5 evaluations, I'm not. What I am attempting to derive is
6 the methodology that you use in normally making your
7 opinion, okay?

8 Now, maybe to start off, let's go back a
9 little bit. You were retained by Mr. Gilman, correct?

10 A Correct.

11 Q And that was in March of this year, correct?

12 A Correct.

13 Q Do you recall that date?

14 A No, sir, I don't.

15 Q And you were retained for what purpose?

16 A I was retained to do mitigation, which included
17 social history, reviewing CPS records and trying to
18 identify patterns of behaviors for Mrs. Lucio.

19 Q And the result, to the blameworthiness in this
20 case; is that correct?

21 A I was not instructed at all to make judgments
22 about the innocence or guilt, sir.

23 Q Well, how long have you been a mitigation
24 expert?

25 A Since 1996.

1 Q And how many mitigation trials have you ever
2 testified in?

3 A Testified in? Between ten, maybe 11.

4 Q Is there ever a case that you have been retained
5 where, after reviewing all of the facts which you
6 perceived to be the necessary facts and circumstances, you
7 were unable to draw or prepare a report or an opinion
8 concerning your client?

9 A I do not always prepare reports. That depends
10 on the attorneys request. Opinions -- I just usually
11 state the facts the way I see them rather than opinions,
12 sir.

13 Q In this case I know we went into certain areas
14 yesterday that we were possibly discussing when we broke,
15 and correct me if I'm wrong, but you interviewed the
16 defendant Melissa Lucio, correct?

17 A Correct.

18 Q For about six hours in total, correct?

19 A Approximately.

20 Q All right. And did you discuss the facts with
21 her in the case?

22 A Actually, no. On one occasion I asked her to
23 give me how she recalled that date but not the rest of
24 facts. Not at all.

25 Q Did you believe that that was strange, that she

1 didn't want to discuss the facts with you?

2 A Absolutely not.

3 Q When you were there, were you not -- when you
4 first interviewed her you identified yourself as somebody
5 that was hired by Mr. Gilman I would assume to assist in
6 her defense, correct?

7 A That is correct.

8 Q Did she at any time during that first interview,
9 second interview or third interview, did she ever discuss
10 the facts of the incident with you?

11 A Yes, she did.

12 Q Now, after that, you discussed the case then
13 with her mother, correct, and her two sisters?

14 A I did not discuss the case with them. I
15 discussed the social history with them.

16 Q At any time in your conversations with her
17 mother, did you ask her if they thought that she was
18 capable of killing her child?

19 A No.

20 Q When you met the sisters, did you at any time
21 ask them their opinion concerning whether or not Ms. Lucio
22 was capable of killing her child?

23 A I did not ask them. I was given the
24 information.

25 Q The information by whom?

1 A The sisters and the mother. I did not ask them.
2 They volunteered the comments.

3 Q And at that time, did you ask them what they
4 formed their opinion on?

5 A Yes, I did.

6 Q And did you include those findings -- well, you
7 prepared no original report, correct?

8 A That is correct.

9 Q After you discussed the facts with the two
10 sisters, with whom -- or what other individuals did you
11 discuss Mrs. Lucio's predicament, Mrs. Lucio's prior
12 history, who else?

13 A With the legal team.

14 Q And if I state -- correct me if I'm wrong, and I
15 think we covered this already, but you never met with
16 Mr. Lucio, correct?

17 A That is correct.

18 Q Mr. Lucio, according to your investigation and
19 discussions with Melissa Lucio and her mother and two
20 sisters, had identified him as being an abusive person,
21 correct?

22 A And the CPS records also, sir.

23 Q Well, what, if anything, did you personally do
24 to ascertain any of the facts derived from CPS or from the
25 statements made by Mrs. Lucio's mother and two sisters?

1 A My interviews were with Mrs. Lucio, the sisters
2 and the mother.

3 Q Did you go down to the police department and
4 attempt to locate any police records that would have
5 indicated that criminal charges have been filed by
6 Mrs. Lucio against Mr. Lucio for battery, for assaults,
7 for terroristic threats or anything of that nature?

8 A Sir, I didn't go to the police department, but I
9 did do a -- I may not use the proper terminology, but the
10 State of Texas website check.

11 Q In the website, how many instances of abuse
12 against Mrs. Lucio did you find?

13 A I did not find any, sir.

14 Q Would you surmise, then, in your experience that
15 there was never any charges filed against Mr. Lucio,
16 correct?

17 A As far as I could find, no, sir.

18 Q Did you go in the same website and attempt to
19 locate individuals, possible acts of violence against
20 Mrs. Lucio concerning Mr. Robert Alvarez?

21 A I didn't make that attempt, sir.

22 Q What, if anything, did you find?

23 A I did not find anything, sir.

24 Q What did that lead you to believe?

25 A That she never filed reports.

1 Q Did you, then -- after you had that information
2 and had it available to you, did you ever contact any of
3 the landlords where Mrs. Lucio lived during the time that
4 she resided with Mr. Lucio and Mr. Alvarez?

5 A I did not.

6 Q Do you think that maybe that might have been
7 something that you could have used in an effort to
8 ascertain whether the assaults, if they happened, may have
9 happened?

10 A We had some eyewitness reports in the CPS
11 records. Excuse me. We had some eyewitness reports in
12 the CPS records. And all the stories match between the
13 CPS records, what their investigators found, what the
14 family was telling me and what Mrs. Lucio was telling me.
15 It all matched.

16 Q You were not limited, were you, ma'am, to the
17 amount of time or the money you could spend to investigate
18 this case, were you?

19 A The time limit came simply because of the timing
20 of the trial, sir.

21 Q Well, if it's your job to be thorough -- and
22 that is your job, correct?

23 A It's my job to do the best I can with the time
24 and opportunities that I'm given, yes, sir.

25 Q You're sitting here today testifying trying to

1 make light of the fact that Mrs. Lucio acted in the way
2 she did because she was sexually assaulted as a child and
3 because she is a battered woman; isn't that correct?

4 A I don't believe I've made that phrase or that
5 comment, sir.

6 Q Then you have no opinion at all concerning why
7 Mrs. Lucio may have killed her child; is that correct?

8 A I have an opinion, but I haven't been asked what
9 that opinion is. I've been stating only facts that are
10 corroborated by CPS investigative records.

11 Q In fact you testified here yesterday afternoon
12 that you're an expert in body language, correct?

13 A I didn't say that, sir.

14 Q Well, I mean, you made the assertion to the
15 ladies and gentlemen of the jury that just by looking at
16 photographs of how a body is seated --

17 A I stated that there was a --

18 Q Answer the question when I finish, okay, ma'am?

19 A Yes, sir.

20 Q I will give you the opportunity to answer.

21 You testified here yesterday that by
22 looking at a photograph that is about 33 years old, by
23 looking at a picture of the defendant which was
24 interviewed a year and a half ago that you could draw an
25 opinion that she was submissive. Furthermore, you went on

1 to state that the reason why she was that way was because
2 of the alleged sexual assaults and the alleged domestic
3 violence against her. Did you or did you not say that?

4 A I said if one looks at the pictures and you look
5 at the patterns of behaviors, that the way that she used
6 her body and her facial expressions utilized in the
7 interrogation video, and the statement video were similar
8 to her habits of the past, that it was not a new behavior.
9 That's what I stated yesterday.

10 Q And what happened in the past would have
11 included cocaine abuse?

12 A That is correct.

13 Q Would have included assault and behavior between
14 herself and her significant other, correct?

15 A That is correct. Yes.

16 Q Would have included also assaults on the
17 children?

18 A Incorrect. I never stated that nor found proof
19 of that.

20 Q Did you ever contact an individual by the name
21 of Janet Thompson --

22 A No, sir.

23 Q -- who was the neighbor of Mrs. Lucio?

24 A No, sir.

25 Q Did you contact any neighbors of Mrs. Lucio at

1 all?

2 A No, sir.

3 Q Again, would that not have been an important
4 fact in determining what your opinion, if any, you had
5 concerning the issue that you are testifying here today?

6 A It would have been helpful, yes, sir.

7 Q So am I true in understanding, ma'am, that you
8 have drawn an opinion in this case without really going
9 outside of the CPS records and your conversation with
10 Mrs. Lucio, correct? Yes or no?

11 A Would I -- I can't answer that with a yes or no
12 answer, sir.

13 Q Let me hear your response.

14 A My response is simply that with the time given,
15 I did due diligence first in looking at the official
16 records, which is the first phase of litigation. Then you
17 corroborate with family and the defendant. And then you
18 go on to other collaterals. I simply ran out of time. I
19 got to do the first two phases, and I did them to the best
20 of my ability. And then the trial started and time ran
21 out. But everything I have testified to, Mr. Padilla, in
22 the records, has been investigated by CPS. The truth
23 cannot be truth for you and not for me because it's the
24 same records and I have not misquoted the records.

25 Q I haven't drawn an opinion. You have. The

1 evidence is -- the evidence, ma'am, is as follows --

2 A And I have stated only the facts.

3 MR. PADILLA: Judge, can we ask her to
4 answer the questions?

5 THE COURT: You all are starting to argue
6 with each other again.

7 THE WITNESS: Okay.

8 THE COURT: Mrs. Villanueva, answer only
9 the question.

10 THE WITNESS: Yes, sir.

11 THE COURT: Don't instruct the jury,
12 Mr. Padilla. That's the Court's providence.

13 MR. PADILLA: My apologies to the Court,
14 Your Honor. I meant no disrespect to this Court.

15 THE COURT: Proceed.

16 Q (By Mr. Padilla) Mrs. Villanueva, if there is
17 evidence to the fact that this defendant, Melissa Lucio,
18 has threatened and had physically assaulted her children,
19 would that change your opinion in this case?

20 A I would need to see those facts, sir.

21 Q If there's evidence on the record that
22 Mrs. Lucio is aggressive and starts fights at the jail,
23 would that be something that would change your opinion?

24 A I would like to see that.

25 THE COURT: Mrs. Villanueva, answer the

1 question. Either it changes your opinion or it doesn't.
2 Just answer the question, Mrs. Villanueva.

3 MR. PADILLA: May I approach the witness,
4 Your Honor?

5 THE COURT: Yes, sir.

6 Q (By Mr. Padilla) I am going to draw your
7 attention to what is marked as State's Exhibit No. 42,
8 which is in evidence. I draw your attention to the date
9 of December 12, 2007.

10 Let me ask you this first before I go any
11 further. You never went down to the Cameron County jail
12 to look at the disciplinary records of the defendant,
13 Melissa Lucio, before surmising an opinion, correct?

14 A I did not.

15 Q There's evidence here that indicates on
16 December 12, 2007 the defendant, Melissa Lucio, had a
17 verbal disagreement with other inmates at the Cameron
18 County jail, okay? If you had that knowledge available to
19 you, would it have affected your opinion on this case?

20 A No.

21 Q I draw your attention now to the next page on
22 December 12, 2007 saying that the defendant was
23 transferred into the dorm infirmary because of verbal
24 argument with an inmate. Knowing that, would that have
25 changed your opinion in this case?

1 A No.

2 Q I draw your attention now to a document dated
3 December 11, 2007 as to Melissa Lucio indicating that she
4 showed disrespect to other inmates and was yelling at
5 other inmates. Knowing that, would that have changed your
6 opinion concerning Mrs. Lucio in this matter?

7 A No.

8 Q I will draw your attention now to a separate
9 document of the same date signed by Sergeant Villarreal,
10 again, detailing the same incident. Again, it wouldn't
11 have changed your opinion, correct?

12 A Correct.

13 Q There's another document here dated December 10,
14 2007 concerning Melissa Lucio alleging disrespect to a
15 guard, or intimidating a guard. Knowing that, would that
16 have changed your opinion concerning Melissa Lucio?

17 A No.

18 Q I draw your attention now to -- it's page two of
19 the incident report.

20 A Uh-huh.

21 Q A document dated, I believe, February 15, 2008
22 concerning Melissa Lucio indicating she was involved in a
23 fight and inciting riotous behavior. If you had known
24 that, would that have changed your attitude concerning
25 your opinion on Mrs. Lucio on this matter?

1 A I would have wanted to read the facts of exactly
2 what happened, sir.

3 Q But you never yourself took the time or the
4 effort, the initiative first to go down there, check with
5 the disciplinary records and then try to verify what
6 discipline, if anything, was taken against Mrs. Lucio,
7 correct?

8 A I did not.

9 Q I now draw your attention, ma'am, to a document
10 dated February 17 -- excuse me. I'm sorry. March 12 of
11 2008. "Melissa Lucio fighting, transferred to the
12 infirmary." If you had known that incident, would that
13 have changed your opinion at all concerning Mrs. Lucio in
14 this matter?

15 A No. It was verbal fighting.

16 Q Do you differentiate between verbal --

17 MR. PADILLA: Well, strike that, Judge.

18 Q I now draw your attention to a report which is
19 dated March 12, 2008, involving an incident at the
20 dormitory concerning a fighting. If you had that
21 information available to you prior to making a
22 determination on this case on Mrs. Lucio, would that
23 change your opinion in this matter?

24 A No.

25 Q There is an incident report dated 4/16/08,

1 ma'am, involving Melissa Lucio charging her with
2 unauthorized communication with a person inside of the
3 facility. If you had known that incident, would that have
4 changed your opinion at all concerning your opinion in
5 this case?

6 A No.

7 Q I will draw your attention, ma'am, to an
8 incident marked April 16, 2008 against Melissa Lucio
9 alleged possession of contraband. Had you known of that
10 incident or does knowing of that incident change your
11 opinion of Melissa Lucio at this time?

12 A I would need to see the other part of the report
13 with the facts.

14 Q If the Defendant Lucio had contraband on her
15 person -- and I'm not saying that she did, but let's say
16 that she had it on her person inside of the jail, would
17 that change your opinion, that act as committed, would
18 have been as a result of what you testified to previously,
19 of being sexually abused when she was a child or because
20 she was a battered woman?

21 A That can't be answered with a yes or no answer,
22 sir. I'm sorry.

23 Q I now draw your attention, ma'am, to another
24 document which I believe was dated February 15, 2008.

25 A Yes.

1 Q There's allegations that Melissa Lucio assaulted
2 another inmate. Knowing that fact at all, would that
3 change your opinion that you are presenting here in front
4 of this Court concerning Mrs. Lucio?

5 A (Reviewing) No.

6 Q I will draw your attention now to a document
7 that is dated December 1, 2007 against the defendant,
8 Melissa Elizabeth Lucio, alleging that she was in
9 possession of tattoo paraphernalia. If you had known the
10 fact that she had been charged with possession of tattoo
11 paraphernalia, would that have changed your opinion that
12 you are giving here today or yesterday concerning
13 Mrs. Lucio?

14 A No.

15 Q Mrs. Villanueva, have you ever had an
16 opportunity to go down there to retrieve the school
17 records for Mrs. Lucio?

18 A No, sir.

19 Q What elementary school did she attend?

20 A Sir, I'm sorry, I don't even have that in
21 memory.

22 Q Well, do you have your notes here with you
23 today?

24 A No, sir. I don't have those notes in front of
25 me. No. I don't recall at all.

1 Q You never asked her what elementary school she
2 went to?

3 A I did, but I don't recall. That was so far back
4 at the beginning, I can't even guess.

5 Q As a social worker you didn't attempt to --
6 again, you are not saying that you were limited in time,
7 but did you send any letter requesting what school
8 district did she go to?

9 A Harlingen.

10 Q Did you ever send a letter to the Harlingen
11 School District requesting copies of those documents?

12 A No, I haven't done that yet, sir.

13 Q What secondary school did she go to? By that I
14 mean, junior high and middle school.

15 A I don't remember, sir.

16 Q So then I would assume you can't remember that
17 you didn't request copies of documents from the middle
18 school concerning Mrs. Lucio?

19 A I didn't request any academic records, sir.

20 Q Well, wouldn't that be important to you as a
21 social worker to determine first her educational
22 intellect, her ability to learn, whether she had made any
23 statements to counselors, any type of outcries, anything
24 of that nature that you as a trained social worker could
25 have used to determine what Mrs. Lucio was telling you and

1 what CPS records reflected to you were consistent or
2 inconsistent?

3 A I haven't gotten to that point yet, sir.

4 Q Okay. Did you ever, in your capacity as a
5 social worker, before you drew your opinion retrieve any
6 medical records concerning the defendant?

7 A There were some records from the Valley Baptist.
8 But right now, I do not recall the dates at all, sir.

9 Q Did you, yourself, ever send correspondence to
10 the Valley Baptist Medical Center requesting copies of
11 documents pertaining to Mrs. Lucio?

12 A I did not.

13 Q How about pertaining possibly to Mr. Lucio?

14 A I did not.

15 Q Maybe pertaining to Mr. Alvarez?

16 A I did not ask for hospital records.

17 Q How about hospital records for the children?

18 A I did not ask for any hospital records.

19 Q Did you find out who the treating physician were
20 for the children?

21 A Yes.

22 Q And did you request medical records for any of
23 those children for the treating doctors?

24 A No, I went by the summaries and CPS records.

25 Q As a trained social worker, you don't believe

1 that having the actual medical documents would be
2 beneficial to you in trying to draw an opinion concerning
3 Mrs. Lucio in this case?

4 A I relied on the CPS records being accurate.

5 Q And let's just, for the sake of discussion,
6 assume that the CPS records are inaccurate, then your
7 opinion in this case would also be inaccurate, correct?

8 A Unfortunately, so.

9 Q Were you hired to look at CPS records? Were you
10 hired to look at all facts and circumstances surrounding
11 Mrs. Lucio, her children, her husbands, her boyfriends,
12 her lovers?

13 A I was hired to do a social history and look
14 through CPS records.

15 Q But the majority of the time were spent on the
16 CPS, correct?

17 A (Cell phone rings) Oh, I apologize. I thought I
18 had turned my phone off. May I turn it off?

19 Q Please. Let me check if mine is off, too.

20 A I apologize.

21 THE WITNESS: I apologize, Judge.

22 Q Okay. And yesterday you testified that
23 previously you had worked -- you had contracted CPS,
24 correct?

25 A Contracted, sir.

1 Q And contracted for what?

2 A Permanency planning team convener.

3 Q Fancy name. What does that mean in general and
4 English terms to us?

5 A What that means is that back at that point was
6 when Child Protective Services was contracting a lot of
7 their work out to different people, and one of the
8 contracts out there was to meet with the CPS team which
9 included the case worker, the supervisors, sometimes the
10 investigator, and review cases in which children had been
11 removed and were in conservatorship, go over their case
12 plans, go over the other contract workers to make sure
13 that the contractors were getting the workers what they
14 needed, and to put together the plan from a quality point
15 of view.

16 Q And I assume at this point you hadn't done that;
17 is that correct?

18 A No, sir.

19 Q Why not?

20 A Because the contract was closed because they
21 decided to bring the work back in-house.

22 Q So you, yourself, are responsible for
23 undertaking many of the duties, that or some of the duties
24 that the CPS workers were responsible for, correct?

25 A To review, yes, and to do oversight.

1 Q Was it common or uncommon for children sometimes
2 to be removed for up to two years?

3 A Yes.

4 Q And looking at this permanency plan, you were
5 mandated on many occasions to conduct certain actions
6 based on court orders, correct?

7 A Yes. Uh-huh.

8 Q And was it your policy or the department's
9 policy to violate the court's order?

10 A Absolutely not.

11 Q The department has a staff of attorneys, do they
12 not?

13 A Yes.

14 Q And I assume that some of the cases that you
15 worked on, they sought the legal remedies on behalf of the
16 children, correct?

17 A I'm sorry. Could you ask that again?

18 Q Yes. CPS is a team of attorneys that represent
19 CPS is, correct?

20 A That is correct.

21 Q And in the cases that you were involved in when
22 you were doing the permanency plans, were any attorneys of
23 CPS involved in attempting to get court orders affecting
24 those children?

25 A Yes.

1 Q So CPS doesn't do everything in a vacuum,
2 correct?

3 A Inside of their own agency.

4 Q Well, they are subjected to court order, court
5 review?

6 A Oh, absolutely. Yes.

7 Q Like everybody else?

8 A Absolutely. Yes.

9 Q When you had a meeting with Mrs. Lucio for six
10 hours, did you ever ask her or did you ever inquire as to
11 whether she had ever used any aliases before?

12 A Any what, sir?

13 Q Aliases.

14 A Aliases?

15 Q Yes.

16 A No, I did not.

17 Q If you knew she had used aliases in the past, is
18 that something that might have affected your opinion in
19 this matter?

20 A It would have added to it.

21 Q And I would assume that if it added she would
22 use aliases because she was sexually abused when she was a
23 child or because she is a battered woman, correct?

24 MR. GILMAN: I'm going to object. What
25 relevance is alias?

1 THE COURT: I will overrule the objection.
2 Let's wind it up, Mr. Padilla.

3 MR. PADILLA: May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 MR. PADILLA: We will mark this as State's
6 43.

7 THE COURT: It should be marked as State's
8 Exhibit No. 44.

9 MR. PADILLA: At this time I am going to
10 offer State's Exhibit No. 44, Your Honor.

11 THE COURT: Any objections, Mr. Gilman?

12 MR. GILMAN: I believe it's an affidavit,
13 Judge, drawn by somebody else.

14 THE COURT: Hold on a second. Ladies and
15 Gentlemen of the jury, I'm going to ask you step out just
16 for a minute, please. I haven't seen that document. I am
17 going to ask you all to go ahead and step out. I haven't
18 seen the document myself.

19 **(Jury not present at 9:39 a.m.)**

20 THE COURT: Your position?

21 MR. PADILLA: Exhibit 44 are therapy notes
22 prepared in this case that provided part --

23 MR. GILMAN: I can't hear, Counsel. I'm
24 sorry. There's a lot noise.

25 THE COURT: Step forward.

1 MR. PADILLA: The documents are therapy
2 notes prepared for Mrs. Lucio by the gentlemen assigned by
3 CPS that shows some of the records -- CPS records that had
4 previously been identified belonging to the therapist --
5 by Mrs. Estrada -- and those are just his notes concerning
6 the interview with the defendant. I'm going to offer it.

7 THE COURT: What's the objection?

8 MR. GILMAN: It's hearsay. It's all part
9 of the record. What do I do? Bring in the entire set of
10 records that I've got from Child Protective Services, and
11 then the Court didn't allow the book to go in.

12 THE COURT: Does Mrs. Villanueva have any
13 personal knowledge of that? Well, go ahead and ask that.

14 MR. GILMAN: She said yesterday that she
15 didn't, if you remember.

16 Q (By Mr. Padilla) Mrs. Villanueva, in reviewing
17 the numerous CPS documents, do you recall seeing a
18 document titled: "Confidential Treatment And Progress
19 Notes On Mrs. Lucio"?

20 A No, I don't.

21 Q And if they are part of Mr. Gilman's
22 documents --

23 A Sir, all I can say is to the best of my
24 knowledge, I don't recall those notes. There were very
25 few actual treatment notes. It was mostly --

1 THE COURT: Mrs. Villanueva, just answer
2 the question.

3 THE WITNESS: Okay.

4 THE COURT: Don't go on, please. I'm going
5 to sustain the objection to the motion on hearsay.

6 MR. PADILLA: I would like to proceed and
7 offer it another way. I still got part --

8 THE COURT: Do what you have to do.

9 MR. PADILLA: I will do what I have to do.

10 THE COURT: Deal with each issue as it
11 comes up. Bring the jury back in, please.

12 **(Jury present, defendant present at 9:42**
13 **a.m.)**

14 Q (By Mr. Padilla) Mrs. Villanueva, did you -- in
15 reviewing the CPS documents, how many documents were
16 there?

17 A I don't have the exact count, sir. There were
18 two boxes the first time.

19 Q And when you were reviewing the documents, did
20 you ever learn whether Mrs. Lucio was seeing a therapist
21 or not?

22 A Yes.

23 Q And was that therapist Jesus Roberto Juarez, to
24 your knowledge?

25 A His name was Mr. Juarez, yes.

1 Q Did you have an opportunity at any time to see
2 the confidential treatment progress notes that were
3 prepared by Mr. Juarez concerning Mrs. Lucio?

4 A No.

5 Q Specifically, do you remember ever seeing a
6 confidential treatment progress note dated March 14, 2008?

7 A No, I don't.

8 Q Now, Mr. Juarez, do you have any personal
9 knowledge of him or who he is?

10 A I have met him, yes.

11 Q And to your knowledge, is he a CPS employee or
12 private contractor?

13 A A contractor.

14 Q Before you prepared your opinion on this case,
15 at any time did you have an opportunity to call Mr. Juarez
16 and discuss Mrs. Lucio in general?

17 A No.

18 Q Why not?

19 A The primary reason is I was, number one, going
20 by the summary of his notes on CPS records; and number
21 two, I did not have a confidentiality release. When a
22 therapist is under contract with Child Protective
23 Services, they do not release the records to any third
24 parties aside from Child Protective Services, or the
25 family court judge.

1 Q And also, Mrs. Villanueva, you could have called
2 Mr. Pete Gilman, and he can file a motion with the Court
3 requesting that the Court review those documents in
4 camera, and if relevant release them to you; isn't that
5 correct?

6 A That is correct.

7 Q You didn't do that in this case, did you?

8 A We had a discussion.

9 Q You had a discussion concerning that, but
10 nothing was done on it, correct?

11 A My understanding is he did ask for CPS to give
12 those records to him.

13 Q And you reviewed the summaries on Mr. Juarez,
14 correct?

15 A Pardon me, sir?

16 Q You reviewed the summaries that Mr. Juarez had
17 given to you, correct?

18 A That is correct.

19 Q Oh, but you don't recall what those summaries
20 contained, if anything, correct?

21 A Not off the top of my head, no.

22 Q Well, let me show you -- then I will ask you
23 just to review what is marked as State's Exhibit No. 44
24 and ask you now that you've remember reading the summaries
25 if you ever read this summary before?

1 A I do recall some sections of it.

2 Q Okay. And so you've seen this document and you
3 used it as part of your evaluations and part of the -- of
4 your evaluation of Mrs. Lucio and you also used it in
5 coming up with an opinion?

6 A I never saw that document, sir. I don't believe
7 I did. I saw the summaries.

8 Q You saw the summaries. What parts of them?

9 A (Nods head in the affirmative).

10 Q Well, do you recall in your review of the
11 summaries back in March of this year that Mrs. Lucio
12 denied ever being sexually abused as a child?

13 A That was not in the summaries.

14 Q So if you had called Mr. Juarez and asked him
15 about that, would that have changed your opinion in the
16 case?

17 A It would have made me delve deeper.

18 Q Okay. And you saw --

19 MR. PADILLA: At this time I offer the
20 report, Your Honor.

21 MR. GILMAN: Again, I'm going to object.
22 Judge, Mr. Juarez isn't here. There's a number of
23 different dates.

24 THE COURT: What's the legal objection?

25 MR. GILMAN: It's hearsay.

1 THE COURT: Sustained.

2 Q (By Mr. Padilla) So if Mr. Juarez is told by
3 Mrs. Lucio that she had not been sexually abused as a
4 child, how would that have changed your opinion?

5 A It would have made me delve deeper.

6 Q So what you are telling me is that your opinion
7 is based on insufficient evidence; isn't that correct?

8 A That's incorrect.

9 Q You held yourself out not today but yesterday as
10 an expert on body language, correct?

11 A I never used those terms, sir. You did.

12 Q Well, can you tell me what treatise, what book,
13 what author I can look at to ascertain the -- how to
14 interpret body language?

15 A I did not interpret body language. I showed
16 patterns of behavior. There's a difference.

17 Q Let me ask it again, ma'am. The patterns of
18 behavior, if you are going to show the patterns of
19 behavior, why show photographs?

20 A That's where the pattern is evident and can be
21 shown.

22 Q How many photographs did you see of Mrs. Lucio?

23 A There was a photo album that had at least eight,
24 ten pages. Then there were anywhere from ten, 15, single
25 pictures aside from that different age ranges.

1 Q Why didn't you include all of them? If your
2 research is so thorough and the pattern is so clear, why
3 didn't you include all of the photographs up on your
4 projection?

5 A Because in essence of time I chose the ones that
6 were most demonstrative to show it in a summarized
7 fashion.

8 Q Isn't it true those are going to assist
9 Mrs. Lucio and that's the only one that you picked out,
10 those two photographs?

11 A No.

12 MR. PADILLA: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 Q (By Mr. Padilla) It's your testimony here under
15 oath today there were no photographs available where Mrs.
16 Lucio is seen smiling?

17 A Yes, there are.

18 Q What is that indicative of?

19 A She was a child. Even children that are abused
20 will smile.

21 Q And truth be told, you haven't verified any of
22 the abuse, correct?

23 A It has been corroborated through family stories
24 and CPS records.

25 Q What have you verified, ma'am? Let me ask you

1 this: Can you name to me the culprit who allegedly
2 molested Melissa Lucio by name?

3 A Frankly right now, sir, my mind is spinning.
4 You'll have to let me look through my paperwork.

5 Q Well, with all due respect, ma'am, you are being
6 brought in here to give this jury information concerning
7 Mrs. Lucio on her alleged sexual assault. I would assume
8 that you would have at least have identified somebody by
9 name and would be sufficient and knowledgeable with that
10 name to be able to provide it to us.

11 MR. GILMAN: Objection, Judge. She's not a
12 prosecutor.

13 THE COURT: Mr. Padilla, there is no
14 question there.

15 MR. PADILLA: I will try to ask questions.

16 THE COURT: Please ask questions.

17 MR. PADILLA: I will try to ask questions,
18 Your Honor.

19 Q (By Mr. Padilla) How many times was Melissa
20 Lucio allegedly assaulted, ma'am?

21 A She stated that they were quote, unquote several
22 occasions in a two year period.

23 Q And what were you able to verify from your
24 personal investigation that would corroborate that?

25 A The mother did corroborate that Mrs. Lucio did

1 inform her of that.

2 Q Let me show you what I will mark as -- not mark.
3 I'm going to show it to you. They were defense exhibits.
4 I will show you Defendant's Exhibit No. 6. This has been
5 identified as Mrs. Lucio --

6 A Uh-huh.

7 Q -- at a young age?

8 A Right. With the paternal grandmother.

9 Q Is that prior or after the assault?

10 A Prior.

11 Q Look at Defendant's Exhibit No. 7. Again, who
12 is that?

13 A That's the father and that's prior.

14 Q Okay. And when exactly did the assault occur?

15 A Approximately she said age six to seven.

16 Q Okay. I'm going to draw your attention to
17 Defendant's Exhibit No. 8. Who is that?

18 A That's Melissa Lucio on her wedding date. She
19 was 16.

20 Q She was smiling, correct?

21 A Yes.

22 Q And how many photos did you see of Mrs. Lucio --
23 other than the two -- I know you said several albums --
24 other than the two that you've identified or that were
25 added here to your PowerPoint?

1 A I'm sorry. Could you ask that again?

2 Q How many photographs did you personally view
3 concerning Mrs. Lucio?

4 A As I stated before, there was a picture album
5 that had maybe around ten pages to it -- full of
6 pictures -- and then there was another set of loose
7 pictures.

8 Q I remember seeing a picture with three children,
9 correct, the three sisters up there, too?

10 A Yes.

11 Q They had the same facial expression, correct?

12 A That was during a birthday party, yes.

13 Q Did you inquire, Mrs. Villanueva, into the
14 criminal history of Mrs. Lucio?

15 A I remember that it was discussed at the very
16 first meeting.

17 Q Okay. Did you learn that she had a DWI
18 conviction?

19 A I recall something like that, yes, sir.

20 Q Did you recall discussing with her on that DWI
21 offense she used the name Melissa Salinas?

22 A No.

23 Q Would it surprise you that she used the name
24 Melissa Salinas?

25 A To an extent.

1 Q On how many occasions did you review the video
2 of Mrs. Lucio's statement with the police department?

3 A Three different times.

4 Q Did you take notes concerning those -- that
5 video or not?

6 A The first time I didn't. I was just watching
7 it.

8 Q Okay. The second or third time?

9 A Some notes.

10 Q Do you have the notes with you?

11 A No, I do not.

12 Q Where are those notes?

13 A I'm not sure I even kept them because they were
14 my own notes just for further questioning.

15 Q We had a little discussion yesterday where you
16 advised us in front of the jury that you had notes on this
17 case. Did you bring those notes with you?

18 A On my interviews.

19 Q And the remainder of notes concerning your
20 interpretation, your evaluations, your considerations,
21 those aren't here?

22 A Not of the video.

23 Q Now you said that you were familiar with CPS,
24 the internal operations of CPS, correct?

25 A To a certain extent, yes.

1 Q Let us suppose that a person is confined in the
2 penitentiary and that person becomes pregnant. Would the
3 department automatically be allowed to remove that child
4 when that child is born?

5 MR. GILMAN: I object. We are on a fishing
6 expedition again.

7 THE COURT: What's the legal -- what's the
8 legal objection?

9 MR. GILMAN: Judge, we're talking about
10 things that aren't even relevant nor --

11 THE COURT: I'm going to overrule the
12 objection. Go ahead.

13 Q (By Mr. Padilla) So, ma'am, if a defendant, and,
14 obviously, if a female defendant gets pregnant in prison
15 does the department automatically have the right, as far
16 as you know, to remove the children from that environment?

17 MR. GILMAN: What department are we talking
18 about, Judge? Objection.

19 MR. PADILLA: I will rephrase the question.

20 THE COURT: Rephrase the question.

21 Q (By Mr. Padilla) Okay. Talking about your
22 experience with CPS, if an individual, obviously a female
23 individual, becomes pregnant while incarcerated in the
24 Texas Department of Corrections, does Child Protective
25 Services have automatic authority to remove that child

1 from the mother, if you know?

2 A Can I tell you what I do know?

3 Q Answer the question, Mrs. Villanueva.

4 THE COURT: Yes or no. Yes or no.

5 THE WITNESS: I'm not an expert on the law.
6 I can't answer that question.

7 Q (By Mr. Padilla) When CPS provides a permanency
8 plan for the children either to someone like you in the
9 past that was contracted and no longer contracted now it
10 is done internally, that's done for each individual child,
11 correct?

12 A Correct.

13 Q So the department will take no action concerning
14 a child unless there is some court order requiring action,
15 correct?

16 A Correct.

17 Q Now in your experience with CPS, if you know --
18 and if you don't, that's fine. Does CPS have the legal
19 authority -- by CPS, I mean Child Protective Services,
20 have the legal authority to protect the fetus?

21 A I don't know.

22 Q Mrs. Villanueva, there is some testimony -- at
23 least from you and also from a review of the CPS
24 records -- that on several occasions Mrs. Lucio attempted
25 to avail herself of drug treatment provided through CPS,

1 correct?

2 A Correct.

3 Q And is it correct also that she abandoned those
4 programs?

5 A Yes.

6 Q Did you, yourself, as a social worker
7 investigate Mrs. Lucio, ever contact any of the drug
8 education or programs where Mrs. Lucio was interned to
9 ascertain why she dropped out of the programs?

10 A No treatment providers were contacted because
11 they're CPS contractors.

12 Q Again, did you or your attorney ever make an
13 effort to locate the name of the individuals and subpoena
14 them to provide you that information?

15 A We did.

16 Q You did?

17 A We did discuss it.

18 Q You discussed it. To your knowledge, was any
19 action taken?

20 A I'm not sure.

21 Q You have provided documents concerning the drug
22 treatment. Is that something that you would have reviewed
23 in drawing an opinion concerning Mrs. Lucio in this case?

24 A Yes, I utilized the summaries from CPS.

25 Q That's correct. But if you were provided

1 something from the actual providers, by that I mean the
2 actual drug treatment facilities, that's something that
3 you would have reviewed, correct?

4 A Yes.

5 Q To be thorough, correct?

6 A Yes.

7 Q Were you able to ascertain from discussions with
8 Mrs. Lucio and her mother and her sisters how frequently
9 her drug use was?

10 A Yes.

11 Q How frequent was it?

12 A It was ongoing from the age of 16 until very
13 recently in 2006. There were typically short periods
14 where she would stop using that would last anywhere from a
15 week to at least a couple of months.

16 Q Did you ever inquire as to why she stopped?

17 A One of the times that she -- oh, yes.

18 Q And could it have been that maybe she couldn't
19 afford the drugs? Was that ever discussed?

20 A I don't believe that was the case.

21 Q Do you know how much she was spending per day on
22 cocaine use?

23 A No, I do not.

24 Q You made an issue that the defendants lived in a
25 level of poverty, correct?

1 A That is correct.

2 Q Would you in your professional opinion as a
3 licensed social worker think that poor people are more
4 likely to kill their children than people with money?

5 A Absolutely not.

6 Q And some of the poverty may have been caused
7 because they're using all of the money to buy cocaine;
8 isn't that correct?

9 A Yes.

10 Q And not only did Mrs. Lucio have a cocaine
11 habit, the husband, Mr. Alvarez, also had a cocaine habit,
12 correct?

13 A Yes.

14 Q Were there not, in some of these discussions
15 about Mrs. Lucio and Mr. Alvarez -- indications that they
16 were using their food stamp money and other resources to
17 go buy cocaine?

18 A Yes.

19 Q So the children weren't being fed because the
20 food stamps were being converted into cash, correct?

21 A That is well documented, yes.

22 Q It's also well documented, is it not, that they
23 were not paying the rent even though Mr. Alvarez was
24 working, isn't that correct?

25 A Off and on, yes.

1 Q And, also that -- and Mrs. Lucio had also
2 worked, had she not?

3 A In the last place, yes.

4 Q What type of work was she doing?

5 A I don't recall.

6 Q How much money was the family bringing in on a
7 weekly basis?

8 A I never got an exact figure on that.

9 Q How much was Mrs. Lucio receiving from the AFDC
10 from Mr. Lucio, if you know? And AFDC stands for Aid For
11 Family with Dependent Children. How much money was the
12 government providing Mrs. Lucio for Mr. Lucio's children?

13 A I recall two different amounts. I recall one
14 amount in the 1,100-dollar range. I believe. I am not
15 100 percent sure. And then there was another amount that
16 I saw that I believe was somewhere in the 1,200-dollar
17 range. I'm guessing. I'm estimating.

18 Q There was something between 1,100 or \$1,200 you
19 were able to review from CPS records that she was getting
20 on behalf of the Lucio children, correct?

21 A I believe I'm recalling correctly, sir.

22 Q And were there any food stamps being provided to
23 the household?

24 A Yes, sir.

25 Q How much in food stamps was being provided to

1 the household?

2 A If I recall, that was also somewhere in the
3 range of -- ranging between -- I believe I recall I saw
4 one report that said in the \$1,000 range and another one
5 that was higher. Again, I am guessing, but it was higher.
6 Maybe around 1,200 or 1,100 also.

7 Q If the food stamps were between 22 or \$2,400 a
8 month, she received 5,000, correct?

9 A Yes. Approximately, yes.

10 Q And you saw in your summary of the CPS records
11 that a lot of times the household was devoid of any food
12 in the refrigerator, correct?

13 A Correct.

14 Q How were the children being fed, if you were
15 able to obtain the CPS records?

16 A According to the CPS records, the children would
17 be taken to Loaves and Fishes at 4:00 o'clock in the
18 afternoon for that meal. And I don't recall the weekend
19 times, but that was documented also.

20 Q As a matter of fact, the CPS records also
21 indicate, do they not, Mrs. Villanueva, that Mr. Alvarez
22 and Mrs. Lucio weren't even paying their rent on time,
23 correct?

24 A That is correct.

25 Q And while they were homeless, did you ascertain

1 whether they ever contacted CPS or any governmental entity
2 to assist them in trying to find a house?

3 A Yes.

4 Q Did the government assist them to do that?

5 A CPS did attempt to try to help them with that,
6 and the help was refused.

7 Q Now, several of the children in your testimony
8 were born with cocaine dependence, correct?

9 A Yes.

10 Q Which obviously meant that even though
11 Mrs. Lucio was pregnant, she still continued to consume
12 cocaine, correct?

13 A That's correct.

14 Q Did you discuss that with her?

15 A Yes, I did.

16 Q With Mrs. Lucio?

17 A Yes, I did.

18 Q What, if anything, were you able to learn
19 concerning that?

20 A It can be classified as addictive behavior. The
21 behavior of an addict.

22 Q As a social worker, how do you get away from
23 addictive behavior?

24 A Pardon me, sir?

25 Q How did you treat addictive behavior?

1 A There are many different ways of doing it, and
2 one of the ways is in-patient treatment.

3 Q But if you have no incentive and no initiative
4 to want to control your drug consumption, it doesn't
5 really matter how many facilities are out there. If the
6 person doesn't go in and follow the program and the
7 regimen, it is very unlikely that that person will be able
8 to kick the habit, correct?

9 A Correct.

10 Q Yesterday you were discussing that you
11 identified risk factors. Do you recall that?

12 A I believe so.

13 Q What is a risk factor?

14 A Child Protective Services has what is called a
15 risk assessment instrument and they identify risk factors
16 in that risk assessment.

17 Q And that is what you reviewed to ascertain what
18 CPS did or didn't do to assist Mrs. Lucio and the
19 children, correct?

20 A No, sir, I didn't ascertain that. I was quoting
21 from their case reviewer, who obviously was using the risk
22 assessment.

23 Q Did Mrs. Lucio at any time blame CPS for her
24 injuring the child?

25 A No.

1 Q Is blaming CPS for their actions, isn't that a
2 theory of convenience now at this point? Is it convenient
3 to blame CPS?

4 A I don't believe I have ever been on this witness
5 stand and stated that CPS was responsible.

6 Q Well, let me ask you this: If the defense --
7 and by "the defense" I mean Mrs. Lucio through her
8 attorneys, are attempting to sway this jury to say that
9 CPS didn't do what they were supposed to do and they're at
10 fault --

11 MR. GILMAN: Judge, are we now attacking,
12 back and forth, the attorneys through the witness? I'm
13 going to object to this line of questioning.

14 THE COURT: Ladies and gentlemen of jury,
15 I'm going to ask you to step outside, please.

16 **(Jury not present at 10:12 a.m.)**

17 MR. PADILLA: May I address the Court?
18 Judge, it's just part of the questions, Your Honor, based
19 on the following factors: She, herself, just testified
20 that she's not blaming CPS; however, the defense asked,
21 you know, insinuated and made reference to the fact that
22 CPS didn't do their job, that what happened to this child
23 was a result of CPS's action, or inaction, and that's why
24 I'm going into that, Judge, if I may be allowed.

25 THE COURT: The question will be allowed.

1 MR. PADILLA: She didn't blame them. Why
2 is counsel going into this witness as to something that I
3 may have said?

4 THE COURT: Hold on. In the guilt or
5 innocence phase, it is impossible for the prosecutor to
6 strike the defendant over her attorney's shoulders.

7 THE REPORTER: I'm sorry, Judge.

8 THE COURT: In the guilt or innocence
9 phase, it is impossible for the prosecutor to strike the
10 defendant over the attorney's shoulder. At least that's
11 how the cases described them.

12 MR. PADILLA: Yes Judge, but --

13 THE COURT: Just a minute. This is a
14 penalty phase. However, in an abundance of caution, I'm
15 going to instruct you to rephrase that question, and not
16 make comment on what the defendant's attorneys may or may
17 not have talked about with CPS. For that fact, you called
18 her to question her yourself, Mr. Padilla, whether CPS did
19 anything they did.

20 MR. PADILLA: Correct, Your Honor.

21 THE COURT: But, you know, go into whatever
22 CPS did or did not do. But do not address it as
23 defendant's attorney, please.

24 MR. PADILLA: Yes, sir.

25 THE COURT: Bring the jury back in.

1 **(Jury present, defendant present at 10:14**
2 **a.m.)**

3 THE COURT: You may be seated. Ladies and
4 gentlemen of the jury, again, I remind you what the
5 attorneys say or question or whatever is not evident. The
6 only evidence is what you hear on the witness stand and
7 what is admitted into evidence, okay? So that is the only
8 evidence that you are to consider.

9 Continue with your questioning please,
10 Mr. Padilla.

11 Q (By Mr. Padilla) Again, Mrs. Villanueva, the
12 issue of CPS. Now, I think we established already that
13 it's always CPA's efforts to reunify the family, correct?

14 A That is the number one objective.

15 Q And if the parents refuse to follow the
16 suggestions and directives of CPS, does that make it more
17 difficult or easier to get the children back?

18 MR. GILMAN: Judge, I'm going to object.
19 Again, we are getting into matters that aren't in the
20 field of this case.

21 THE COURT: Overruled. Proceed.

22 Q (By Mr. Padilla) If the children were removed
23 from parents and the parents do not follow the directives
24 and the suggestions of CPS, does it make it easier or more
25 difficult to get the children back?

1 A More difficult.

2 Q In your conversations with Mrs. Lucio,
3 Mrs. Villanueva, did you learn that she was studying to be
4 a certified nurses assistant?

5 A At one point, yes.

6 Q And did you learn that she dropped out halfway
7 through the course?

8 A Yes.

9 Q Did you inquire as to why she dropped out of the
10 course?

11 A Yes.

12 Q Why?

13 A Lost interest, depression and substance abuse.

14 Q Did she ever tell you that she lost interest in
15 her children, too?

16 A No.

17 Q You testified yesterday or yesterday afternoon
18 that at one time the family was homeless, correct?

19 A That is correct.

20 Q And also that Child Protective Services
21 attempted to assist them in moving into a homeless shelter
22 but they refused, correct?

23 A Yes.

24 Q Why did they refuse, if you know from your
25 conversations with them or with review of the CPS records?

1 A There were conflicts between Mrs. Lucio and
2 Mr. Alvarez. That's also the time that the principal saw
3 him hitting her. And there was still substance abuse
4 happening.

5 Q The principal, did you contact him? Did he give
6 you a statement to come into court to testify about the
7 alleged abuse?

8 A Attempts were made to find that principal.

9 Q Who made the attempts?

10 A One of the attorneys.

11 Q But you, yourself, did not?

12 A No. I'm not an investigator.

13 Q You're not an investigator, but you've been
14 hired, have you not, ma'am, to review all of the
15 circumstances of Mrs. Lucio?

16 MR. GILMAN: Argumentative, Your Honor.

17 THE COURT: I'm going to overrule the
18 objection. Mr. Padilla, we need to wind this up.

19 MR. PADILLA: I'm sorry, Your Honor.

20 THE COURT: We need to wind this up.
21 Unless you are going into new areas, I will instruct you
22 not to be repetitive.

23 MR. PADILLA: Thank you, Your Honor. I
24 will move along to what I perceive to be new area.

25 Q (By Mr. Padilla) Mrs. Villanueva, did you have

1 an opportunity to visit or to talk to Mrs. Castillo, who
2 was the foster care mother of Maria Alvarez?

3 A No.

4 Q Would that not be a pertinent item in developing
5 your social history?

6 A Individuals under contract with Child Protective
7 Services don't talk to third parties. You have to go
8 through the case worker.

9 Q Did you ever contact the case worker to attempt
10 to talk to the foster mother who was caring for the child,
11 Mariah Alvarez?

12 A No, I did not.

13 Q I'm sorry?

14 A No, I did not.

15 Q Now, you also testified yesterday that
16 Mrs. Lucio has three brothers, correct?

17 A I don't recall. I might have.

18 Q Maybe you didn't testify to that. Do you recall
19 at this point how many brothers Mrs. Lucio has?

20 A I'm sorry. I blanked out on that.

21 Q Let me ask you this: Not knowing the amount but
22 knowing that there are some out there, did you ever make
23 any contact with any of the other brothers to ascertain
24 the allegations of sexual abuse of Melissa Lucio?

25 A I did not.

1 Q You also testified yesterday concerning the
2 children, that some of the children have considerable
3 amount of problems, correct? Either emotional or physical
4 problems, correct?

5 A Correct.

6 Q Anywhere ranging from sexual activity, to bed
7 wetting, to attention deficit disorders and things of that
8 nature, correct?

9 A Correct.

10 Q Did you contact any of your workers to ascertain
11 what the department's position was concerning the
12 children?

13 A I did not contact any CPS employees.

14 Q Would it surprise you, ma'am, that -- or do you
15 know -- let me ask you this: Do you know that Child
16 Protective Services has filed a petition to terminate the
17 parental rights of Mr. and Mrs. Lucio's children?

18 A Yes, I was aware.

19 Q And has that knowledge played any part in your
20 opinion in this case?

21 A That's difficult to answer with only a yes or
22 no, sir. I'm sorry.

23 Q Okay. That's fine. From reviewing the CPS
24 records, Mrs. Villanueva, is it your opinion, if you have
25 one, that what the children are going through now is

1 partly responsible for the lack of parental guidance by
2 Mrs. Lucio and Mr. Alvarez?

3 A Yes.

4 Q There was a question asked of you yesterday
5 afternoon concerning discipline of the children. Do you
6 remember that, if you do?

7 A I'm sorry. I don't recall.

8 Q Okay. I'll pass on it. The PowerPoint that you
9 presented here yesterday was derived from the notes that
10 you made during your investigation, correct?

11 A Yes. And the CPS records.

12 Q You testified yesterday afternoon that you
13 probably need about three more months to give an opinion,
14 correct? I mean, in those three more months of work that
15 would allow to give an opinion?

16 A To finish doing other interviews and things of
17 that sort, yes.

18 Q Had you had three months or you started three
19 months earlier, it's quite possible that your opinion may
20 have been different than it is today; is that correct?

21 A Ah, probably not.

22 Q Probably not?

23 A Unless I find something drastically different.

24 Q Ma'am, if you can't find anything drastically
25 different, then you don't look for it, correct?

1 MR. GILMAN: Objection.

2 MR. PADILLA: Your Honor, I'm asking --
3 Judge, I'm just asking.

4 MR. GILMAN: Drastically --

5 MR. PADILLA: I'm asking, Judge.

6 THE COURT: I am going to overrule the
7 objection.

8 MR. PADILLA: That would be my last
9 question.

10 Q (By Mr. Padilla) Okay. If you can't find
11 anything, we don't know -- I mean, you can't know what
12 your opinion would have been because you never completed
13 the work and it's quite possible your opinion would be
14 different if you had done your complete investigation,
15 correct? Yes or no?

16 A That's difficult to answer with a yes or no
17 answer. If you'd allow three sentences.

18 Q Yes or no, ma'am?

19 A Ask me the question again.

20 MR. PADILLA: Judge, at this time I would
21 pass the witness, Your Honor.

22 THE COURT: Mr. Gilman?

23 **REDIRECT EXAMINATION**

24 **BY MR. PADILLA:**

25 Q The information that you received was Child

1 Protective Services' notes and interviewing that you did
2 in this case; is that right?

3 A That's correct.

4 Q And you had to rely upon what people told you
5 and what Child Protective Services indicated in their
6 file?

7 A That is correct.

8 Q Isn't it true, ma'am, that you didn't go to the
9 foster parents because I told you, you couldn't go to
10 those because of court order?

11 MR. PADILLA: I object to the form of the
12 question, Your Honor. You can ask generally why she
13 didn't go.

14 THE COURT: I'm going to sustain the
15 objection.

16 Q (By Mr. Gilman) Are you aware of any court
17 parameters as to what we could do and couldn't do with
18 Child Protective Services' notes?

19 A Yes.

20 Q Is foster parents one of those?

21 A Yes, it is.

22 Q Going to the jail records that Mr. Padilla
23 showed you, the jail records that he showed you indicated
24 that Mrs. Lucio was assaulted. She didn't do the
25 assaulting; isn't that correct?

1 A That is correct.

2 Q And it shows that Mrs. Lucio was living in a
3 dorm when the paraphernalia was discovered; is that
4 correct?

5 A That is correct.

6 Q And nobody took responsibility for the
7 paraphernalia, all of the ladies in the dorm were
8 punished?

9 A That is correct.

10 Q And also those records indicate that Mrs. Lucio
11 was trying to prevent a fight?

12 MR. PADILLA: Your Honor, I object to that.
13 I'm going to object to that type of question, unless he
14 first allows this witness to review the document to show
15 what it is. I think defense attorney --

16 THE COURT: I'm going to sustain the
17 objection.

18 Q (By Mr. Gilman) Well, the documents should speak
19 for themselves, then, don't they?

20 A Yes, they do.

21 Q And all of that that you saw, you read?

22 A The ones that Mr. Padilla showed me, I read.

23 Q Okay. And the jury can go back and read each
24 one?

25 A That is correct.

1 MR. GILMAN: All right. Pass the witness.

2 **RECROSS-EXAMINATION**

3 **BY MR. PADILLA:**

4 Q Mrs. Villanueva, who has more power, CPS or a
5 sitting district judge, if you know?

6 A I am not sure. I would assume that it would be
7 the judge, but I can't be sure.

8 Q And in the past you know that if you make a
9 reasonable inquiry from the judge, the judge would give
10 you appropriate orders reflecting reviewing of the
11 children's record and medical records or any records,
12 correct?

13 A I'm sorry. I didn't get the question.

14 Q Well --

15 MR. GILMAN: That's because it wasn't one,
16 that's why. Objection.

17 THE COURT: Sustained. Ask a question,
18 Mr. Padilla.

19 MR. PADILLA: Sir, I will pass the witness.

20 MR. GILMAN: Nothing further.

21 THE COURT: You may step down. May the
22 witness be excused?

23 MR. PADILLA: No, Your Honor. I want to
24 keep her on call.

25 (Witness was excused at 10:29.)

1 THE COURT: Okay. Step down. Be within a
2 half hour's call. At this time I think it's probably
3 logical to take a break, unless you don't want one. If
4 you don't want one, we will continue. We will take a
5 break for ten minutes.

6 (Jury not present at 10:30 a.m..)

7 MR. GILMAN: I want to put some matters on
8 the record.

9 THE COURT: Mr. Padilla isn't here.

10 MR. GILMAN: We can do it when we get back.
11 Before the jury comes back, I would like to put matters on
12 the record.

13 THE COURT: Let's do it now. Mr. Padilla?

14 MR. GILMAN: Judge, during the time that
15 we're conducting this trial and both of us attorneys are
16 trying to get evidence from the witness stand --

17 THE COURT: Yes, sir.

18 MR. GILMAN: -- unfortunately, we have
19 jurors that don't seem to care very much about this trial
20 or think it's very funny. But they're talking amongst
21 themselves and laughing as opposed to paying attention.
22 Maybe they're bored with this trial, but I think out of
23 respect for the Court and this trial, they should not be
24 communicating with each other or laughing during the time
25 of the trial.

1 THE COURT: I understand. Anything else,
2 sir?

3 MR. GILMAN: No, sir.

4 THE COURT: We will see you all in about
5 ten minutes.

6 MR. PADILLA: Thank you.

7 **(Recess from 10:32 a.m. to 10:45 a.m.)**

8 THE COURT: All right. Are you ready?

9 MR. GILMAN: Yes, sir.

10 THE COURT: Dr. Pinkerman, I'm assuming
11 you're next. Mr. Gilman, who are you calling as your next
12 witness?

13 MR. GILMAN: Dr. John Pinkerman.

14 THE COURT: Dr. Pinkerman, would you please
15 raise your right hand?

16 **(Witness Sworn in By The Court.)**

17 THE WITNESS: I do.

18 THE COURT: Please be seated. Your
19 witness, Mr. Gilman.

20 MR. GILMAN: Thank you.

21 **JOHN E. PINKERMAN,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. GILMAN:**

25 Q State your name for the jury, please, sir.

1 A John Edward Pinkerman.

2 Q And you live where, sir?

3 A In Port Isabel, Texas.

4 Q And Dr. Pinkerman, what is your educational
5 background?

6 A I have attained a clinical psychology degree
7 from the University of Detroit at Mercy Hospital, and that
8 was in 1994. Prior to that, I was a master's level
9 psychologist working since 1981.

10 Q And you got your bachelor's degree where, sir?

11 A Michigan State University.

12 Q You are now a licensed psychologist here in the
13 State of Texas?

14 A Yes, sir.

15 Q And do you have any other licenses?

16 A I am also licensed as a school psychologist.

17 Q In what areas of specialization have you been?

18 A Psychological assessment, some geriatrics, some
19 with adolescents and forensics.

20 Q Do you have any teaching experiences?

21 A Yes, sir.

22 Q What kind of teaching experiences have you
23 taught?

24 A I taught at the graduate college of education at
25 the University of Texas Pan American, for three and a half

1 years. Program that I taught in was guidance and
2 counseling training. Guidance and counseling, staff and
3 LPCs to enter the human and education field to help kids
4 primarily.

5 Q Have you been a guest lecturer at any school?

6 A Several, mostly up north.

7 Q Up north we're talking Michigan --

8 A Yeah.

9 Q -- where it's cold?

10 A Yes.

11 Q In your professional experience, could you tell
12 us a little bit about your professional experience?

13 A Okay. I worked for 15 years in a juvenile court
14 setting doing assessment of parents and children coming
15 before the court. Some of those cases involve child abuse
16 and neglect. Probably 80 percent of those cases were
17 delinquent cases. That was prior to moving to Texas. And
18 then when I came to Texas, I worked as a supervisor for
19 the Texas Department of Mental Health and Mental
20 Retardation in the Harlingen office. And gradually opened
21 my own practice with my partner, Dr. Gonzalez, and we've
22 been working throughout the Valley since about 1998 for a
23 little over ten years.

24 Q Have you published anything?

25 A Published an article on a survey of Canada and

1 the United States on the composition of juvenile courts
2 and the process they use in doing psychological testing
3 and what's the nature of the psychological test that they
4 use in the process of their court work.

5 Q And have you done any professional training in
6 continuing education?

7 A Yes, sir.

8 Q Would you tell the jury about that?

9 A I repeatedly attended conferences and trainings
10 and workshops on forensic psychology, the area where
11 there's the overlap between the law and the practice of
12 psychology. And those topic areas included capital murder
13 cases but also child custody, civil cases involving both
14 possibly personal injury. I also do a lot of training in
15 the area of EAP, Employee Assistance Programs, and peer
16 support programs. I do training for the Border Patrol.
17 I'm in the process of getting enrolled as a provider for
18 the -- I guess it is DEA, Drug Enforcement Administration.
19 Have done some consultation with local fire department and
20 local police departments.

21 Q And you were hired by me through a court order;
22 is that correct?

23 A Yes, sir.

24 Q To appear as a mitigator; is that correct?

25 A Yes, sir.

1 Q And have you appeared in other criminal cases,
2 capital murder cases?

3 A Yes.

4 Q And in how many other capital murder cases have
5 you appeared in?

6 A I was trying to estimate and in capital murder
7 cases I would say five or six, and in murder cases, maybe
8 three more.

9 Q And you're being paid through this court order;
10 is that correct?

11 A Yes.

12 Q Doctor, did you meet with Melissa Lucio who is
13 seated here to my far right?

14 A Yes, I did.

15 Q How many times have you met with her?

16 A The report that I've given outlines the number
17 of times, the dates that I met with her. I met with her
18 probably close to 12 hours starting back in January or
19 February of this year.

20 Q And did you give any kind of test or anything
21 like that to help you in reaching opinions in this case?

22 A Yes, I did.

23 Q Would you describe what sort of tests were
24 given?

25 A There are a battery of tests that we normally

1 administer that tries to look at, number one, a criteria
2 of the general intelligence, and what kind of components
3 go into that are both verbal and performance abilities.
4 And the importance of that is that if one's ability
5 general intelligence is compromised in a way that would
6 give --

7 MR. VILLALOBOS: Your Honor, I'm going to
8 object to nonresponsive. He asked what kind of test. He
9 is going through each explanation.

10 THE COURT: Sustained.

11 BY MR. GILMAN:

12 Q Explain each test and what the tests are
13 designed to cover.

14 A I'm sorry. I got --

15 Q Would you explain the tests that you have
16 given --

17 A Oh, okay.

18 Q -- to Melissa Lucio, and what you were trying to
19 -- the information you were trying to get from those
20 tests?

21 A Okay. The information on the first test was
22 what I just mentioned, the Wechsler Adult Intelligence
23 Skill, Third Edition.

24 Q And what, if anything, does that test show?

25 A Exactly what I just said. It gives us a

1 general -- a general IQ score and that score is broken
2 down into subtests.

3 Q And the next test, if any?

4 A The Minnesota Multiphasic Personality
5 Inventory-2. That's a general personality questionnaire
6 that's often used in a wide variety of settings. It's
7 probably the most utilized personality measure in our
8 repertoire as psychologists. The other test is the Millon
9 Multiphasic -- I'm sorry, the Millon Clinical Multiaxial
10 Inventory, III. And that, again, tries to assess
11 personalty factors from a slightly different perspective.

12 There were other screen tests that I
13 employed that were not as substantial in their general
14 scope, but things like I draw a person -- I also had her
15 do a sentence completion. These are the kinds of
16 procedures and methods that we use to corroborate our
17 clinical impression over the course of our assessment.

18 Q And in your interview, do you also gain a
19 history of Mrs. Lucio?

20 A Yes.

21 Q Where did you get this history?

22 A From her. I also obtained information from
23 Mrs. Norma Villanueva. She was also consulting on the
24 case in regard to the social history and background.

25 Q And did you review the video statement of

1 Mrs. Lucio while she was at the police station?

2 A Yes, I did, on at least two occasions.

3 Q Did you observe or make any observations of
4 Mrs. Lucio during your interviews with her?

5 A Yes.

6 Q Would you tell us what those observations were?

7 A My general impressions were that at least
8 initially she seemed -- her behavior, her manner, her
9 demeanor seemed at odds or incongruent with what I
10 understood why she was being evaluated. She seemed low
11 key, reserved, sort of disconnected from feelings. As the
12 interview went on, you know, she gradually became more I
13 think relaxed. She was always cooperative in the
14 assessment that I did. I think the biggest thing that
15 struck me was in her performance on one of the tests it
16 seem that --

17 MR. VILLALOBOS: Judge, I object. It is
18 not in a question format. He asked for general
19 observation. He's getting into more than what he asked
20 for. I object to the narrative. I would ask for it to be
21 a question and answer.

22 THE COURT: I will overrule the objection,
23 but I will ask you to try to keep it in question and
24 answer form.

25 MR. GILMAN: Yes, sir.

1 Q (By Mr. Gilman) Go ahead, Doctor.

2 A Help me with your question, I guess.

3 Q All right. You've made observations dealing
4 with her behavior. Have you made any kind of diagnostic
5 assessment, intelligent personality factors that you
6 gleaned from these tests in observations?

7 A Yes, I did.

8 Q Could you explain to the jury what you found?

9 A Okay. Specifically with the IQ, her overall IQ
10 is 82. That's a low average. Her performance IQ falls in
11 the average range and verbal IQ in the low average range.
12 Another score that's derived from that is called the
13 verbal comprehensive score. And that score fell in the
14 border line range, which means that it's close to the
15 mentally retarded range. Not that it fell on the mentally
16 retarded range, but it was close. It was a score of 78.
17 Scores in the -- any of our scores are estimated to fall
18 within a range so that if a person retook the evaluation,
19 their score might fall plus or minus within a predicted
20 range.

21 Q Why are these scores on these tests important?

22 A They help us understand the strengths and
23 weaknesses of the individual. And in this particular
24 instance before the Court, if somebody has limitations in
25 their ability to communicate, understand and process

1 information up to the point where they're compromised in
2 mental retardation, the Court needs to know that.

3 Q And your findings in this case?

4 A In the part of the assessment with the
5 intelligence test, the other part is more of a personality
6 test to determine my general diagnostic impressions. And
7 my general diagnostic impressions of her were that she was
8 overutilizing a lot of repression and denial. And
9 repression to the point where, again, a disconnect between
10 thoughts and feelings or experiences and feelings. And I
11 saw that in both her test behavior and in my observations
12 that I reported earlier.

13 In assigning diagnosis to her, what I
14 identified is that she had a presentation consistent with
15 major depression with prior substance abuse which was in
16 remission. But maybe most importantly post traumatic
17 stress disorder in how she, I guess, psychologically was
18 organized. And those are the three major areas of concern
19 that I saw with her. She was also, and I also
20 acknowledged it in a different report, the victim of prior
21 physical and sexual abuse both as an adult and as a child.

22 Q And how do these now help shape an opinion that
23 you've made? Why are we going through all of this? What
24 is the importance of this?

25 A As you introduced, I am asked to help in this

1 case the jury to look at mitigating factors. And I am
2 prepared to explain my version of what mitigating factors
3 are.

4 Q And your mitigating factors are basically in
5 compliance with the normally accepted educational tools
6 that are used in determining this; is that correct?

7 A Yes.

8 Q So these tests that you've given, are these
9 tests that you would have to give anybody in the same type
10 of situation?

11 A Yes.

12 Q The information you get varies from patient to
13 patient?

14 A Correct.

15 Q Now, based upon the test scores and in talking
16 with her as well as the social study, what were you able
17 to determine?

18 A I guess the process, the methodology that I used
19 has been reviewed. What I'm looking to -- is trying to
20 understand all of the mitigating factors that would
21 address not the issue of criminal responsibility --
22 because that's already been decided -- but the issue of
23 moral responsibility and trying to take a look at -- there
24 aren't -- my professional stance and approach is not to
25 try to find excuses for somebody, but to provide a way

1 that all of us could look at the issue of moral
2 responsibility and all of the mitigating factors that may
3 lead a person off the path that normally we would expect
4 people to take.

5 So I'm trying to look at all of the factors
6 that are in my domain of expertise and say: In what way
7 did her normal trajectory as a child, as an adolescent and
8 as an adult get derailed all along the way? And what
9 choice point did she have and not have that may have led
10 her to this position in life that she's before the Court?

11 And our notion here is that there are all
12 of us that don't have this circumstance, may not have a
13 lot of these adverse events and adverse aspects and
14 factors in our life. And they in a way give us a higher
15 degree of moral responsibility because we haven't had to
16 live those derailling experiences in our own trajectories.
17 Of course, everyone goes through tough times. But tough
18 times can have an accumulative effect and tough times --

19 MR. VILLALOBOS: Your Honor, again, I
20 object to the narrative.

21 THE COURT: I'm going to sustain the
22 objection. It is a narrative.

23 MR. GILMAN: Judge --

24 THE COURT: Ask the question.

25 MR. GILMAN: I'm trying to, Judge. Just a

1 second, please.

2 Q (By Mr. Gilman) All right. You indicated that
3 there were different parts of her life that have affected
4 her in the choices that she has made. What are some of
5 the matters that -- what are some of the things in her
6 life that have affected and created the person that we
7 have here?

8 A Okay. Some general factors and not factors that
9 are all inclusive, but early on she certainly had been
10 sexually abused. There were lots of issues of physical
11 violence that she was subject to and sibling
12 relationships. She married at an early age, started a
13 life and career, and a role as a mother. And I think
14 those two factors sort of set a stage or directory for the
15 vulnerability that she had.

16 One point I would disagree or add to, you
17 know, is your question asked me about choices. But
18 sometimes these kind of events remove some of the element
19 of choice. What I'm trying to describe, her personality
20 functioning, when you've been victimized repeatedly over
21 your life, it's not unexpected, like we would expect
22 people with post traumatic stress disorder, to have some
23 suspicion, distrust or distancing occur from those that
24 were in positions of trust or authority. And I think
25 that's a pattern that I observed in looking at her total

1 picture.

2 Q Did you observe any indications of being a
3 battered woman?

4 A There were many associated factors to that, and
5 there's a pro and a con to the data that I have. You
6 know, she herself didn't acknowledge the issue of
7 battering because she defines it as physical violence.
8 Battering or the battered women syndrome also includes
9 subtle and even nonverbal coercions and power and control
10 dynamics, as well as the physical and sexual connotations
11 that go along. I should have said just yes. But, you
12 know, I'm really trying to educate the Court and the jury.

13 Q Yes, sir.

14 THE COURT: Go ahead, Mr. Gilman.

15 Q (By Mr. Gilman) And did you make any kind of
16 violent risk assessment or anything like that?

17 A I did.

18 Q Would you explain to the Court what you were --
19 I mean, to the jury here what you're trying to find out in
20 a violent risk assessment?

21 A Trying to answer the question that in the future
22 what is the probability and risk associated with her
23 conduct and what factors may exacerbate that, but also
24 what factors may -- again, the word mitigate reduce the
25 likelihood of her risk for reoffending or for committing

1 aggressive acts.

2 Q Were you able to draw a conclusion?

3 A Yes.

4 Q And what did you use to reach that conclusion.

5 A Her presentation in the interview, the history
6 that I had before me, her description of the history, the
7 psychological testings like I'd done with her in my formal
8 psychological evaluation, and then the large body of
9 literature both in the psychological literature and in the
10 State Department of Corrections literature that talks
11 about the different levels of risk for offenders within a
12 prison population. Because when I'm looking at the risks,
13 I'm not considering getting the parameters of the present
14 circumstances any issue of risk to the community. That is
15 often not a part of my assessment.

16 Q And your opinion then, sir, is what?

17 A Her risk -- there's -- okay. I'll try to just
18 answer your question. There's a low probability that
19 she's a risk to reoffend --

20 Q Okay.

21 A -- in a prison setting.

22 Q Why?

23 A Because of her psychological factors or features
24 that I assessed, because of her own personal history, the
25 lack of any aggression and violence, any prior assaults in

1 her history, the profile of her age because people tend to
2 be more aggressive the younger they are and she's now, I
3 think, 39. The factor of the context in which the
4 violence occurred, which is very different in the context
5 in a prison setting. I think her history of responding
6 well while she has been incarcerated where there hasn't
7 been any personal violence or problems. All those factors
8 led me to that conclusion.

9 And when I say low probability, it's
10 unrealistic for me to say there's no probability. We all,
11 I think, know that that science isn't that accurate. It's
12 more accurate than it used to be, but we also know that in
13 our common sense tells us that anybody "could lose it"
14 under certain circumstances. You can't say there's no
15 probability.

16 Q Were you able to determine if Mrs. Lucio was
17 disciplined at all during the time that you visited her in
18 jail?

19 A Yes.

20 Q From this evidence, does that help you in making
21 this assessment?

22 A Yes.

23 Q And why and how did that help you in making the
24 assessment?

25 A The nature of her disciplinary problems helped

1 me make that.

2 Q What were the disciplinary problems that you
3 heard?

4 A She possessed, and I don't know what the details
5 were, a tattoo apparatus. She also had attempted to pass
6 a note or a letter to another inmate. And then she got
7 into some argument with another female inmate.

8 Q And what, if anything, did that -- and maybe the
9 results of, of whatever discipline she received, did that
10 tell you?

11 A Well first, I guess, the factor being that she's
12 not seeking out and challenging others, you know, in an
13 aggressive way. And the second thing was that she
14 successfully completed the sanctions. She was able to
15 accept that consequence and go forward.

16 Q When you visited Mrs. Lucio, you visited her in
17 the jail; is that correct?

18 A Yes, sir.

19 Q Did you ever see in the jail a set of rules that
20 the inmates were supposed to follow?

21 A No, I didn't.

22 Q Did you at any time ever find out if any of the
23 inmates were given a set of rules in writing or anything
24 like that?

25 A No, I didn't.

1 Q So whatever rules there are in any particular
2 day, she complied it with whatever the rules were that
3 day?

4 MR. VILLALOBOS: Judge, I object. That's
5 speculative. How would you know --

6 THE COURT: Sustained. He says he didn't
7 know what the rules were.

8 Q (By Mr. Gilman) Well, we don't know what the
9 rules are, do we?

10 A No.

11 Q And we don't know if she knows what the rules
12 are, do we?

13 A No, I don't know.

14 Q Is the assessment, Doctor, that you made are
15 generally accepted methods of determining risk in your
16 field?

17 A Yes, it is.

18 Q Okay. Earlier you said that Melissa's behavior
19 was not congruent with the acts accepted -- or that she's
20 accused of, but you didn't finish.

21 A Okay.

22 Q What was is it that you were trying to tell us?

23 A Can you be more specific?

24 Q Unfortunately, I can't. I'm trying to fill in
25 where you were cut off. You were talking about Melissa's

1 behavior and not being congruent with the act or the
2 charges that she had pending against her.

3 A Okay. Part of what I looked at is group data as
4 well as individual data, and that's where the research
5 comes in. And what I was trying to understand is to what
6 extent does she match what has been developed as
7 categories for women who have been involved in killing
8 their children. In all those categories there, about six,
9 there's only one that seems to possibly resemble her
10 situation, except there isn't history with her of prior
11 aggression against children.

12 Q So based on that you are able to help draw the
13 conclusion?

14 A That she's not -- my impression would be that
15 she doesn't fit any of those six categories strongly but
16 slightly in that one area.

17 Q So what do we find from that if she doesn't fit
18 into those categories, then what?

19 A Part of those categories involve determination
20 of -- and like my evaluation -- what is a high risk
21 configuration would be if you fit into those categories.
22 If you were mentally ill, and had a lot of problems with
23 aggression. People who are diagnosed schizophrenia, or
24 bipolar, are likely to be more involved in physical
25 aggression. She doesn't have those diagnoses. People who

1 -- many of the infant murders that occur, of course,
2 before the first year of life. She is not in that
3 category. Part of the risk assessment would be that if
4 she is going to have access to that population again? No,
5 I don't see that happening.

6 Q Another category is a retaliating mother?

7 A Yes, sir.

8 Q Did she fit into that?

9 A No, sir.

10 Q And a merciful mother?

11 A A merciful mother who would be a child who's
12 chronically sick, handicapped, disfigured and the mother
13 acts on that motivation.

14 Q And the unwanted or unexpectant mother, she
15 doesn't fit into that?

16 A No, sir.

17 Q Now during the interview at the police station,
18 the video, there were some periods of time when it showed
19 just a blank expression on Melissa Lucio. Is there
20 anything that could be determined by that?

21 A You have to be more specific.

22 Q Well, does a blank expression that she exhibited
23 during this time when the police officer is yelling at
24 her, or during the time when people are chewing her out,
25 or something like that, during that interview, does that

1 indicate anything? Does that help us in determining what
2 kind of person she is?

3 A It was another source of data for me to look at
4 in trying to understand her general presentation. Her
5 personality features involve a lot of what we call
6 hysterical features. And hysterical features are
7 characterized by repression denial, the isolation in it,
8 disassociation of feeling and thoughts. And that's what I
9 thought I saw with her in those interviews, and that's
10 what I think I see in her as a consequence of both the
11 depression, but also that long history of early childhood
12 abuse and into adulthood with the abuse and misuse that
13 she went through. So that emotional numbing that I --
14 this disassociation that I saw also may have been part of
15 having lost her child.

16 And all of us react differently to loss.
17 Some of us get frivolous and goofy and other people shut
18 down, and some of us get really angry and some of us cry.
19 And what I was trying to sort out was how her reaction and
20 demeanor in that statement added to me understanding her
21 total personalty function and -- I'm sorry. I'm going on,
22 but it's his job to catch me.

23 Q And during that interview process when the
24 police officer is yelling at the person, at Mrs. Lucio,
25 she's not fighting back, she's not arguing back, she's not

1 saying: Hey, wait a minute, you're out of line. She's
2 not saying anything. Does that indicate the type of
3 personality she is or does that help?

4 A It helped me in that kind of extremely stressful
5 circumstance. One of the rules of thumb that I use as a
6 psychologist is that when people come in to see me or
7 they're involved in a stressful circumstance -- because
8 seeing a shrink is a stressful circumstance. Most of us
9 are not real comfortable with that initially. What we
10 look at is the person's first demeanor, their first way
11 presenting themselves. And in her situation there were a
12 lot of nonverbal queues about how she was acting, a lot of
13 queues in the way that she responded. She kept her eyes
14 cast off. The fact that she wasn't contending any of the
15 statements, that to me was congruent with that impression
16 that this is a common method of handling situations for
17 her.

18 Q Close down?

19 A Yes.

20 Q So if society or -- if she's in a prison
21 situation and someone's yelling at her or something like
22 that, she's basically going to withdraw as opposed to be
23 aggressive and attack?

24 A Again, I would say it's a probabilistic
25 statement. It's more probable that she would withdraw and

1 not respond.

2 MR. GILMAN: Pass the witness, Judge.

3 THE COURT: Mr. Villalobos?

4 **CROSS-EXAMINATION**

5 **BY MR. VILLALOBOS:**

6 Q Dr. Pinkerman, my name is Armando Villalobos.
7 I'll be asking you some questions. If you don't
8 understand them, please have me restate them and I will be
9 happy to do so.

10 A Thank you.

11 Q Going back -- you said you are Dr. John Edward
12 Pinkerman; is that correct?

13 A Yes, sir.

14 Q And Doctor, you went through your licensing and
15 your history with Mr. Gilman, but what I want to ask you
16 is -- forgive me for asking you, but I have to. What kind
17 of problems did you have with your licensing? Have you
18 had a problem with your licensing before?

19 A Yes, sir.

20 Q Specifically in 2006, sanctions from the board
21 of psychologist; is that correct?

22 A Yes, sir.

23 Q What exactly is a failure to substantiate
24 forensic services?

25 A You know to this date I'm not sure.

1 Q You don't know why you had trouble?

2 A I could give you my version of it. I was asked
3 to do an evaluation of two adults and two children in a
4 contested custody issue, and I recall making the decision
5 at that time in writing the report that I was going to
6 throw caution to the wind and stick my neck out on behalf
7 of the kids. And I developed an intervention and
8 recommendation that attempted to reunite the family that
9 was, as I've had other independent evaluators look at, was
10 balance for both parents. However, one of the parents had
11 a history of litigious prior lawsuits. Did file a
12 complaint against the board. My work was reviewed and I
13 was found to be violating a standard in practice. That
14 was resulting in a probation which I successfully
15 completed. That is the only issue and circumstance that's
16 ever occurred to me.

17 Q You haven't had any other in Michigan?

18 A No, sir.

19 Q On the five or six capital murders and the three
20 or four murders that you participated, how many of them
21 involved a mother brutally killing her child?

22 A None.

23 Q Have you personally worked on any, whether it
24 was a student, an intern, volunteer, on any case involving
25 a mother who has brutally murdered her child?

1 A Yes.

2 Q Could you describe your involvement in that
3 particular case?

4 A In those cases it would have been back in
5 Michigan and it would have been involved in consultation
6 and workshops, clinical discussions with colleagues about
7 individual cases.

8 Q Were you involved in the actual case dealing
9 with the actual defendant?

10 A I may have been involved in doing psychological
11 evaluations with members of the family, but I don't think
12 any of the actual defendants.

13 Q You said that you met with the defendant for 12
14 hours, more or less?

15 A Yes, sir.

16 MR. VILLALOBOS: Your Honor, may I
17 approach?

18 THE COURT: Yes, sir.

19 Q (By Mr. Villalobos) Before I start questioning
20 on the report, I want to make sure this -- this was given
21 to me by the defense counsel, so this is all I have.
22 Forgive my notes on it. I just want to make sure it's the
23 right one.

24 A Yes.

25 Q Okay. And this report you gave to the defense

1 on July 9 of this year, which would have been two days
2 ago?

3 A Yes, sir.

4 Q Now you already testified that you went through
5 the several techniques. How long does the Millon exam
6 take?

7 A It varies. It could be anywhere from 20 minutes
8 to a half hour.

9 Q What about the sentence completion blank?

10 A In her case it took longer than usual. She was
11 quite deliberate. And I remember her finishing and she
12 overlooked that it had a second page. And the directions
13 specified that you turn it over and finish on the other
14 side. So that took probably 50 minutes.

15 Q What about the Wechsler -- is it Wechsler Adult
16 Intelligence Scale?

17 A Yes. That was close to two hours.

18 Q And the Minnesota Multiphasic Personality
19 Inventory?

20 A About an hour and 45 minutes.

21 Q And the -- is it Millon?

22 A Uh-huh.

23 Q -- Millon Clinical Multiaxial Inventory-III?

24 A About 45 minutes.

25 Q So it was about eight or nine hours that you

1 actually discussed things with her?

2 A Yes.

3 Q Or does that 12 hours also include document --
4 include clinical and document review?

5 A No.

6 Q Now, Doctor --

7 A When I say ten to 12 hours, it would be face to
8 face contact with Mrs. Lucio.

9 Q So in addition to the testing?

10 A No.

11 Q Now, you said that your purpose here is for
12 mitigating factors?

13 A Yes, sir.

14 Q Obviously mitigating would be to explain the
15 person's good points to the jury?

16 A No.

17 Q No? Well, you said it wasn't to make an excuse;
18 is that correct?

19 A Yes.

20 Q But isn't that what you're saying, that because
21 of her life that's why she did this particular act?

22 A No.

23 Q So her history has nothing to do with the act.
24 Is that what you're saying then?

25 A No.

1 Q Then if it doesn't have anything to do with the
2 act or it does have anything to do with that, which is it?

3 A I have gotten confused. What are you asking me?

4 Q Well, does her history have anything to do with
5 the act itself, with the murder, her brutally killing the
6 child? Is that what you're telling the jury?

7 A The jury has made that determination. What I am
8 trying to inform is how does her personalty features
9 relate to the issue of mitigation.

10 Q I understand that and maybe I'm not being clear,
11 and I apologize for that. You are here to give the jury a
12 picture of her history as best as you can, mitigating
13 factors, what her personality is based on her history and
14 I presume birth because you are born with a natural
15 personality; is that true?

16 A Yes. The genetic factors really do load into
17 the personality.

18 Q Well, we're here, and you're here because she
19 killed her daughter. You know that, right?

20 A Yes. That's what she's convicted of, yes.

21 Q Are you saying that you don't believe she killed
22 her daughter? Is that what you are saying?

23 A It's not important whether I have an opinion
24 about that and that's beyond my purpose. My purpose is to
25 do an assessment about mitigation.

1 Q Well, then obviously this major traumatic event
2 where she killed her daughter would be a factor of her
3 personalty, would it not?

4 A Yes.

5 Q I mean, it is a violent -- a very violent act,
6 is it not?

7 A Yes.

8 Q You are aware of the injuries sustained by that
9 child, aren't you?

10 A To some degree.

11 Q To some degree?

12 A I've read some things about it.

13 Q Have you reviewed the autopsy report and the
14 pictures?

15 A Yes.

16 Q So you are aware of the brutal beating that this
17 child suffered?

18 A No, because I don't -- I'm a psychologist. I
19 mean, I saw pictures. I didn't make too strong of an
20 opinion about how those injuries -- I don't have an
21 opinion about --

22 Q Well, Doctor --

23 A It was obvious that child had been very
24 seriously hurt.

25 Q Well, that child was brutally beaten, and she

1 has become responsible for that beating.

2 A Uh-huh.

3 Q Now doesn't that mean that she's a very violent
4 person?

5 A Earlier I attempted -- no. I just want to give
6 you -- try to give you your straight answer real simple.

7 Q What do you call a person that beats a child to
8 death then if they're not violent?

9 A You just -- I don't know if I can answer it if
10 you're framing it that way. Earlier I explained that --

11 Q Well, Doctor, it's nothing fancy about it.
12 You're either violent or you're not.

13 MR. GILMAN: Judge, he's asking questions
14 that he cannot answer. If he wants an answer, he's going
15 to have to let him --

16 MR. VILLALOBOS: I think he is refusing to
17 answer.

18 MR. GILMAN: I don't believe that he is
19 refusing anything, Judge. I think he is trying to be as
20 helpful as he can.

21 THE COURT: Okay. Gentlemen, I'm going to
22 overrule the objection. Doctor, just answer the question.
23 If you need to explain, say: I need to explain.

24 THE WITNESS: Thank you. Please ask the
25 question.

1 Q (By Mr. Villalobos) When you brutally beat a
2 child, how can you not consider that violent?

3 A Please restate your question.

4 Q When you beat a child, how can you not consider
5 that violent?

6 A I didn't say that.

7 Q So you are agreeing that that is a pretty
8 violent act?

9 A Yes.

10 Q And when someone commits a pretty violent act,
11 wouldn't it be safe to say that they are violent?

12 A No, not in my profession.

13 Q Not in your profession?

14 A May I qualify my answer?

15 Q I'll be asking you some more questions. You'll
16 have a chance to do that?

17 THE WITNESS: Your Honor, may I qualify
18 that? You asked if I --

19 THE COURT: Dr. Pinkerman, Mr. Gilman can
20 ask other questions to clarify that.

21 THE WITNESS: Yes, sir.

22 THE COURT: But at this point just answer
23 the questions, please.

24 Q (By Mr. Villalobos) You said that the defendant
25 had trouble on the verbal part of the exam?

1 A Yes, sir.

2 Q Did you give or administer the exam in Spanish?

3 A No, sir.

4 Q Do you know Spanish?

5 A No, sir.

6 Q I don't want to presume anything, but your
7 partner is Gonzalez. Does he know Spanish?

8 A No. Because my partner's a female.

9 Q I'm sorry. Does she know Spanish?

10 A That's okay. Absolutely.

11 Q Was she not able to assist you?

12 A Help me. What's the question?

13 Q Well, if she can't understand it in English, did
14 it occur to you that maybe she can do it in Spanish and
15 maybe communicate better to you?

16 A I determined before I began the assessment, and
17 based also upon her request or permission that the
18 evaluation could be reasonable and valid conducted in
19 English.

20 Q But if she didn't understand it properly,
21 wouldn't that affect the score?

22 A No. You're confusing issues. Verbal
23 comprehension, whether it would be in English or Spanish,
24 is a construct based on the psychological testing and the
25 individual items and how they load into the subtests. In

1 her case, she has some difficulty handling information
2 that comes from other people and understanding in
3 processing. She's much better with visual information to
4 see things and to size things up that way.

5 Q Well, wouldn't that be also true of somebody who
6 doesn't understand the language?

7 A It could be.

8 Q And you didn't inquire into that possibility?

9 A Yes, I did.

10 Q You indicated that you relied on the history
11 from her, from Mrs. Villanueva and those are the two
12 people that you actually talked to regarding her history?

13 A Yes, sir.

14 Q So the history -- a lot of what you're basing it
15 on, is based on that history -- a lot of your opinions in
16 this report. Isn't that a fair statement?

17 A A certain proportion. I disagree with the "a
18 lot." But it is a part of the total data that I use to
19 make the determination, the recommendations, and the
20 diagnostic impressions.

21 Q You testified because of the extensive sexual
22 and physical abuse and you made the diagnosis based on
23 that, that would come from her history, would it not?

24 A Yes. Uh-huh.

25 Q So did you review any police reports or any

1 reports yourself detailing the actual alleged sexual abuse
2 and physical abuse by Mrs. Lucio?

3 A Okay. Not by her and I didn't review any that
4 were done to her.

5 Q That information would have been gleaned from
6 Mrs. Villanueva?

7 A Yes, sir.

8 Q Did you inquire with Mrs. Villanueva of where
9 she got that information?

10 A Her information derived from the review of those
11 records, of Child Protective Services, from interviews
12 with family members, from review of statements, the
13 historical record that she was accessing for the social
14 history.

15 Q Okay. So that is what she told you; is that
16 correct?

17 A Correct.

18 Q So you have to take her word at that; isn't it
19 true?

20 A Yes.

21 Q Now, CPS records would have information
22 regarding the specific child that those records apply to.
23 Wouldn't that be true?

24 A Yes.

25 Q So it wouldn't necessarily detail anything about

1 the parent. It would be more so of what the child is
2 going through?

3 A When I -- okay. If you're asking me in general,
4 when I've seen CPS records they involve the allegations,
5 and the perpetrators or the alleged perpetrators are
6 discussed in the allegations.

7 Q What I'm trying to get at is that those CPS
8 records are not going to detail the child -- I'm sorry,
9 the childhood years, or the problems that the defendant
10 had. It's going to detail what specific child we're
11 dealing with?

12 A Well, part of the CPS records involve clinical
13 records of psychological evaluations of some of the kids.
14 And some of those records may -- and I can't recall
15 specifically -- have made reference to the parents'
16 personal and social history.

17 Q But you're not sure in this particular instance?

18 A I'd have to look at the records, sir.

19 Q Now, when you interviewed -- well, first of all,
20 you're familiar that the defendant has several kids?

21 A Yes, sir.

22 Q A family, I think, of what, 12? I'm sorry, 14
23 children.

24 A Yes, sir.

25 Q You realized that she also came from a very

1 large family herself?

2 A Yes, sir.

3 Q I think another -- at least six more?

4 A Yes, sir.

5 Q Okay. Plus the parents?

6 A Yes, sir.

7 Q Plus the defendant's parents? Another two more.

8 So we're talking over 20 people at least that could be
9 possibly interviewed. Would you agree with me on that?

10 A That I could have interviewed?

11 Q Well, that someone could have interviewed when
12 you are trying to deal with a social study or a history of
13 somebody.

14 A Yes, I would agree with you on that.

15 Q Do you think it would be wise that out of 20
16 plus people that you interview at least three or four?

17 A That I?

18 Q Anybody would interview three or four. Is that
19 what you would have done?

20 A In answer to that, it would be a good practice
21 to do so.

22 Q To do what, to interview?

23 A To have direct interviews.

24 Q With three or four or as many as the 20 plus
25 people that you can?

1 A The standard -- the practice on that is not
2 numerical. What you are looking to do is identify
3 collaborative information and information that would be as
4 accurate as you can in order to, again, have
5 substantiation for your position.

6 Q You would want to have accurate information.
7 That means that you would want to have information on both
8 sides of the coin, so to speak?

9 A Yes, sir.

10 Q If you limited your interview and your
11 information to the defendant and those closest to her
12 only, does that help your accuracy?

13 A It wouldn't be a good practice.

14 Q It would make sense if you want accuracy to go
15 outside of the small circle of the defendant, who
16 obviously is here because of a murder and the possibility
17 death penalty, and go to people outside that circle to try
18 to get accuracy. Wouldn't that be true, Doctor?

19 A Yes.

20 Q Did you inquire if that occurred in
21 Mrs. Villanueva's social history?

22 A No.

23 Q She has testified that she has not gone outside
24 of that small circle. Would that be a problem in your
25 opinion on this report?

1 A No.

2 Q Why not? It's not accurate.

3 A No, I am not drawing that conclusion. What I'm
4 saying is that based on the level of work she did and the
5 factual information as she related it to me in combination
6 with my interview with Mrs. Lucio, there is enough
7 collaborative information that wouldn't undermine the
8 opinions that I have, my diagnostic impression.

9 Q Even though it wasn't an accurate detailing of
10 information like you described just a minute ago to the
11 jury?

12 A Well, let me -- if I may try to answer that.
13 Because as we all know there is a certain point of
14 diminishing returns in obtaining information and what I
15 would look at in the procedure methodology that I employ,
16 I'm looking at -- in an efficient way -- taking the
17 multiple sources and multiple methods that I have, pulling
18 that together at a certain point. Yes, I could go ahead
19 and do six or eight more hours of testing, for example,
20 but I'm not sure incrementally that's going to give me
21 anymore accuracy, anymore level of certainty in what I
22 did. So my methodology almost ethically gets constrained
23 by the need to be efficient about it.

24 Q So you're saying that ethically you cannot
25 question more people?

1 A No, I didn't say that.

2 Q You're saying that you talked to her and since
3 she says she's gone through this physical and sexual abuse
4 that you feel like if you talked to the other 17 people,
5 they would have said the same thing. You're assuming
6 those other 17 people would say the same thing. That's
7 diminishing returns, is it not?

8 A I think it's the old notion of sampling when we
9 do statistics, as an example. You don't go out and survey
10 the whole population.

11 Q Well, sampling again, Doctor, you're only going
12 to sample her particular group. Does that make sense,
13 Doctor?

14 A It makes sense in one level is that we assume
15 that people are going to be honest and cooperative and
16 that they're not going to be disassembling.

17 Q So you are assuming that this brutal murderer of
18 a child is going to be honest with you?

19 A I assume that there's a level of disclosure and
20 honesty, but I also in the psychological testing that I
21 administered have checks and balances to that. And in my
22 psychological tests there are ways to detect if somebody's
23 exaggerating or minimizing. In her case, she was
24 forthright. She was cooperative about how she approached
25 the testing. She didn't try to make herself out to look

1 like she's real sick. And, she also didn't try to make
2 herself look like she was totally virtuous. To me, that's
3 another anchor point that helps me assess the reliability
4 of the source of information that she's giving me when I
5 do my interview.

6 Q Well, Doctor, that kind of conflicts with your
7 report where you are indicating that she's minimally aware
8 of the serious implication of the charges against her.
9 How's that being forthright with you?

10 A I don't understand that question at all.

11 Q You're saying she's being forthright, honest.
12 She's kind of purging herself to you, but in your reports
13 you say --

14 A No, I didn't say that.

15 Q Well, that's what it seems like you are saying
16 to this jury. Are you not telling this jury that you are
17 basing your opinions on her being honest and forthright
18 with you?

19 THE COURT: Answer the question, Doctor.

20 THE WITNESS: As I -- I think I've answered
21 it.

22 Q (By Mr. Villalobos) Well, you're saying that
23 you're basing it -- and correct me if I'm wrong but --

24 A Uh-huh.

25 Q -- in your opinion that she is being honest and

1 forthright with you?

2 A I answered that earlier.

3 Q Answer it again.

4 A Okay.

5 Q Is that a yes or no?

6 A No.

7 Q She's not being honest and forthright?

8 A No, I. Can't answer your question like that.

9 Q Doctor, you're playing games with the jury.

10 MR. GILMAN: Objection, Judge. Counsel is
11 being argumentative.

12 THE COURT: You are. Objection sustained.
13 Ask your questions, Mr. Villalobos.

14 MR. VILLALOBOS: Yes, Your Honor.

15 Q (By Mr. Villalobos) You do have an opinion in
16 your report that she's minimally aware of the serious
17 implications of the charges against her?

18 A That was my impression, yes.

19 Q What date did you first see her?

20 A I think it was January 18. The report would
21 specify that.

22 Q January 18 of which year?

23 A Of this year.

24 Q So this would be almost a year after the murder?

25 A Yes.

1 Q Obviously by that point she would know that
2 she'd been charged with a crime of capital murder; is that
3 true?

4 A Yes.

5 Q By that time, she would know that we're seeking
6 the death penalty; isn't that true?

7 A That's where the psychological evaluation tries
8 to enlighten us.

9 Q Well, I asked you if she would be aware of that
10 by that point?

11 A Partially.

12 Q Partially?

13 A That's why I'm saying that in the statement,
14 that she's partially, minimally aware.

15 Q And in fact, she still according to your report,
16 is in denial and is still talking about reuniting herself
17 with her children?

18 A Yes, sir.

19 Q You talked about her IQ. Are you telling the
20 jury that she's mentally retarded?

21 A No, sir.

22 Q Well, in your professional opinion, is the
23 defendant mentally retarded?

24 A No, sir.

25 Q You talked about -- well, the defense counsel

1 asked you about there being no set of rules in the jail,
2 that because there's no set of rules she didn't know that
3 she was violating rules. Do you remember that line of
4 questioning?

5 A Yes.

6 Q Are you saying that the defendant has to be told
7 what the rules are in order to know right from wrong?

8 A No.

9 Q So she wouldn't have to have been told: Do not
10 torture your daughter for 88 days and kill her in order
11 for her not to do that?

12 MR. GILMAN: I'm going to object to that.

13 THE COURT: I'm going to overrule the
14 objection.

15 THE WITNESS: I didn't hear your comment,
16 Judge.

17 THE COURT: I overruled the objection. Go
18 ahead and answer the question.

19 THE WITNESS: Okay. Please rephrase.

20 Q (By Mr. Villalobos) She doesn't have to be told
21 in a written form of rules: Do not brutally kill your
22 daughter for her not to have done it?

23 A Correct.

24 Q So the written rules are pretty much irrelevant
25 in this matter?

1 A I don't have any opinion about that.

2 Q You indicated that the disciplinary records were
3 very vital for you in your opinion?

4 A No.

5 Q No? Well, you described to Mr. Gilman that they
6 were. Do you recall that?

7 A I didn't use the word vital.

8 Q Well, what word did you use?

9 A That they are part of the whole picture.
10 They're a piece of data, and those pieces of data are all
11 important in trying to look at risk assessment and the
12 probability that she could be violent in the future.

13 Q Now, when did you see those reports or those
14 documents?

15 A I'm trying to think. I think one of them was in
16 the first part of this year, and the other two I haven't
17 seen.'

18 Q Then how are you basing your opinion on these
19 documents that you haven't seen?

20 A The documents, or the relating to me that the
21 offenses or the disciplinary action occurred?

22 Q Okay. Well, forgive me. I had assumed that you
23 saw the documents. But let me ask you: How did you
24 become aware of the disciplinary action?

25 A She had told me and then on one of the

1 disciplinary actions I was told by Norma.

2 Q You were told by whom?

3 A Norma.

4 Q By Norma?

5 A Mrs. Villanueva.

6 Q Oh, I see. Okay. I'm sorry. So you never saw
7 any of the actual documents from the jail?

8 A No, sir.

9 Q Now the disciplinary actions that you are
10 referring to are the tattooing equipment and the passing
11 of notes; is that correct?

12 A Ah, yes.

13 Q Now when somebody is doing something secretly,
14 whether it's passing of notes secretly or hiding something
15 like tattoo equipment, doesn't that normally say to
16 somebody that they know that it's wrong to have that or to
17 do that behavior?

18 A Yes.

19 Q Were you aware that she had twins while she was
20 incarcerated?

21 A Yes, sir.

22 Q Well, you stated that she would not have access
23 to that population. And again, I'm going to have to
24 presume that you meant babies. Is that what you meant in
25 that statement?

1 A I meant children.

2 Q Okay. Did you know that she had access or that
3 she continues to have access to her twins?

4 A Yes.

5 Q So how can you make a statement that she would
6 not have access to that population when she currently
7 enjoys access to that population?

8 A In the normal discourse or normal conduct of
9 what I understand of a correctional facility, they do
10 permit supervised visits, but I understand that children
11 aren't there 24 hours a day. Children aren't in the
12 custody of parents in that correctional facility.

13 Q We're dealing with the word "access". You said
14 that they would not have access. That would be incorrect?

15 A In the sense that in an adult prison, they don't
16 have kids in the prison.

17 Q Do you know that for a fact?

18 A Everything in my experience tells me that they
19 don't incarcerate kids and adults together.

20 Q Do you know that for a fact --

21 A I don't know for a fact.

22 Q I'm not saying that they're incarcerating these
23 twins. What I am saying is that do you know the maternity
24 ward in the prison, how they have the children and how
25 they stay with the children for awhile?

1 A Yes, I've heard of that. But I haven't been
2 there.

3 Q Okay. Wouldn't that be access to a child?

4 A Yes.

5 Q So that earlier statement would be incorrect?

6 A In the -- okay. It would be.

7 Q It would be.

8 A I'm qualifying my answer.

9 Q Okay. Thank you. Doctor, you've admitted that
10 you were incorrect once. Thank you.

11 A I'm allowed to make a statement --

12 MR. GILMAN: I object to that statement.

13 THE COURT: All right. I'm going to
14 sustain the objection. No sidebar. Let's keep it
15 question and answer.

16 MR. GILMAN: I'm going to ask the court to
17 instruct the jury to disregard it.

18 THE COURT: Yes, sir. ladies and gentlemen
19 of the jury --

20 MR. VILLALOBOS: My apologies to the Court.

21 THE COURT: -- the comments of the
22 attorneys are not evidence. You are only to consider the
23 evidence that comes from the witness stand and that is
24 introduced and is admitted in evidence. That's just not
25 evidence. Please disregard it.

1 MR. VILLALOBOS: I apologize, Your Honor.

2 THE WITNESS: May I also qualify that
3 answer?

4 MR. VILLALOBOS: I'll ask you a question
5 here.

6 THE COURT: Dr. Pinkerman? Just answer the
7 questions. I think we'll go through this quicker if you
8 do that.

9 THE WITNESS: Okay.

10 Q (By Mr. Villalobos) Have you ever worked in one
11 of the prison systems?

12 A I've worked in the Michigan Department of
13 Corrections subcontract which was a locked facility, yes,
14 and I've gone into quite a few prisons and jails.

15 Q So you are aware that crime does occur in the
16 prison system?

17 A Yes, sir.

18 Q You are aware that there are drugs in the prison
19 system?

20 A Yes, sir.

21 Q That murders occur in the prison system?

22 A Yes, sir.

23 Q All right. And that assaults take place in the
24 prison system?

25 A Yes, sir.

1 Q Now, do they all occur in a violent -- I'm
2 sorry, in a confrontational setting?

3 A I don't know what you mean by confrontational
4 setting.

5 Q You indicated earlier that your opinion of her,
6 the way she was blank faced, the way she would retract
7 herself when somebody would start yelling at her or being
8 aggressive with her, that she's in your opinion not the
9 type to be violent in a confrontational setting; is that
10 correct?

11 A Yes.

12 Q Now, there are nonconfrontational settings in
13 which a crime could take place; isn't that?

14 A Yes.

15 Q You could kill somebody in their sleep?

16 A Yes.

17 Q You could suffocate a child or somebody weaker
18 than you who is not being confrontational with you?

19 A All of those things are possible.

20 Q You know that -- I'm sorry. Are you aware of
21 these nonconfrontational crimes within the prison system?

22 A Yes.

23 Q They do occur?

24 A Yes.

25 Q Are you aware that inmates do get pregnant in

1 the prison system?

2 A Yes.

3 Q And that the defendant is still within the
4 childbearing years?

5 A That's a medical opinion, but I am thinking that
6 would be -- yes.

7 MR. VILLALOBOS: Your Honor, I've got
8 plenty of questions. I'm not going to finish before
9 lunch.

10 THE COURT: I was hoping.

11 MR. VILLALOBOS: I apologize.

12 THE COURT: Ladies and gentlemen of the
13 jury, we're going to go ahead and break for lunch. We
14 will see you back at 1:30. I remind you of the
15 instructions. Don't discuss this case with anybody, not
16 even amongst yourself until all of the evidence is in.
17 Thank you very much. We will see you at 1:30. No
18 laughing with each other either.

19 **(Lunch recess)**

20 THE COURT: All right. Mr. Padilla,
21 Mr. Villalobos, I've got the proposed charge as I've
22 signed it. Only change that I made -- please step
23 forward, Mr. Gilman and Mr. Cordova. The only change that
24 I made is that I put a signature date at the end. I'm
25 hoping this is going to make the charge conference at the

1 appropriate time faster. We will see you all at 1:30.

2 (Lunch recess taken.)

3 THE COURT: Are you ready? We don't have
4 much longer.

5 MR. VILLALOBOS: It depends, Your Honor. I
6 want to be thorough in my cross examination.

7 THE COURT: Ready, Doctor?

8 THE WITNESS: Yes, sir.

9 (Jury enters at 1:28 p.m.)

10 THE COURT: You may be seated. Thank you
11 very much. It is now 1:28. Let the record reflect that
12 this is Case Number 07-CR-885-B, State of Texas versus
13 Melissa Elizabeth Lucio. The defendant is present along
14 with her two counsel. The State is being represented by
15 the attorneys as before.

16 **CROSS-EXAMINATION (Continued)**

17 **BY MR. VILLALOBOS:**

18 THE COURT: Mr. Villalobos, I believe it
19 was your last testimony that we would like to put on the
20 record.

21 Q (By Mr. Villalobos) Doctor, are you aware of the
22 defendant meeting with a Jesus Juarez?

23 A I don't recall the name.

24 Q Or the therapist while she was incarcerated?

25 A I heard that she had contacts with someone.

1 Q Did you review any of the notes?

2 A No, sir.

3 Q Did you discuss anything with Mr. Juarez?

4 A No.

5 Q Would it surprise you to learn that in February
6 of this year --

7 MR. GILMAN: Objection, Your Honor. And I
8 want them to be asking about notes from somebody else that
9 is not even here appearing in court.

10 THE COURT: Is your objection as to the
11 admission of that document on a hearsay basis?

12 MR. GILMAN: Yes, sir.

13 THE COURT: Sustained. (Court Reads
14 Monitor) "However, would it surprise you to learn that."
15 That's proper cross examination.

16 Q (By Mr. Villalobos) Would it surprise you to
17 know that in February of 2008 in her history to him, she
18 claimed no physical or sexual abuse?

19 A No, it wouldn't.

20 Q Why is that?

21 A As I said in some of my previous statements, she
22 has a history of being very suspicious and distrustful.
23 She obviously hasn't had the opportunities to develop that
24 kind of a trusting relationship with the agency and with
25 maybe him.

1 Q But she would automatically trust you and tell
2 you the truth as opposed to him?

3 A As I said, I look to a lot more collaborative
4 information than just what she tells me.

5 Q Well, the time line here is you were hired in
6 January of '08; is that correct?

7 A Yes, sir.

8 Q And Norma was hired in March of '08; is that
9 correct?

10 A I don't know.

11 Q This was made in February of '08. You don't
12 think it was made in anticipation of her defense -- the
13 changing of her story?

14 A I have no opinion.

15 MR. GILMAN: Where and what is changing of
16 what story?

17 MR. VILLALOBOS: I will clarify it.

18 MR. GILMAN: We're talking about
19 speculation.

20 THE COURT: Rephrase your question.

21 Q (By Mr. Villalobos) You don't think that it
22 would be the defendant changing her story once she figures
23 out that it is to her benefit to claim physical and sexual
24 abuse?

25 A I'm sorry. I don't think what? I'm not trying

1 to be -- I'm just -- I'm losing it.

2 Q Well, Doctor, common sense. If the defendant is
3 charged and convicted of capital murder and facing the
4 death penalty, she's meeting with experts that are helping
5 her at her defense. After she meets with them, wouldn't
6 she have a better picture of what she needs to do to
7 defend herself?

8 A As I said before, her average -- her IQ was low
9 average.

10 Q You are saying she can't figure that out, how to
11 help herself?

12 A Her weakness is verbal comprehension, the verbal
13 integration of information and putting the big picture
14 together. She doesn't do that real well. Now, that's the
15 psychological explanation for what kind of question you're
16 asking me.

17 Q The question I'm asking: Is it a possibility
18 that she would say one version and then change the version
19 in order to help herself in this trial?

20 A Yes, sir.

21 Q Going back to your report, do you have a copy
22 with you?

23 A No, I don't.

24 Q Did you get a copy to the defense or the
25 original to the defense?

1 A Yes, sir.

2 Q Do you recall in your report indicating that she
3 denied any feelings of sadness, anger or anxiety?

4 A What page? It would be helpful if I see the
5 report.

6 MR. VILLALOBOS: Your Honor, I would
7 request that the defense would give him a copy of his own
8 report, if they have an extra one, or allow them to make a
9 copy.

10 MR. GILMAN: I will be glad to give it to
11 him, Your Honor. I will be glad to introduce it into
12 evidence.

13 MR. VILLALOBOS: I would move that it be
14 introduced into evidence.

15 MR. GILMAN: That's fine.

16 MR. VILLALOBOS: This would be State's
17 Exhibit -- 44?

18 THE COURT: Forty-five I'm sorry.

19 MR. GILMAN: That's for the State.

20 MR. VILLALOBOS: I appreciate the defense
21 counsel introducing it for me.

22 Q (By Mr. Villalobos) Can you review that real
23 quick?

24 A Sure. (Reviewing) And which page?

25 Q Just to make sure that is your report, a copy of

1 your report.

2 MR. VILLALOBOS: Judge, did you already
3 admit it?

4 THE COURT: It's admitted.

5 **(State's Exhibit Number 45 admitted)**

6 MR. VILLALOBOS: Okay.

7 THE COURT: I'm not sure it was clear,
8 Mr. Villalobos. Thank you.

9 THE WITNESS: It appears to be an accurate
10 copy.

11 Q (By Mr. Villalobos) Okay. On page three,
12 behavior, observations, mental status.

13 A Yes.

14 Q She denied feelings of sadness, anger, anxiety?

15 A Yes.

16 Q She denies having specific phobias or bad
17 dreams?

18 A Yes.

19 Q She's relatively calm?

20 A Yes.

21 Q Page six at the very bottom of the page, you
22 write: "She likely has a history of disregarding the
23 social conventions and rules."

24 A Yes.

25 Q Does that translate to, that she just doesn't

1 follow the norm, society's normal rules?

2 A In general, yes. That her attitude and behavior
3 would not be the average or typical. On certain
4 occasions, it would be. On certain occasions, it wouldn't
5 be.

6 Q Now going to the next page on page seven is
7 where you put discussing battered woman syndrome; is that
8 correct?

9 A I'm discussing I guess the consequences of what
10 her life experience has led her to be as far as her
11 psychological organization. I have not used that
12 descriptor.

13 Q Well, in your testimony you indicated that you
14 felt that she was a battered woman syndrome?

15 A No.

16 Q No. You disagree with that?

17 A I said that of the six categories, she resembled
18 only that battered woman category, at the exclusion of the
19 others. And she has characteristics that are associated
20 with that. To say "battered woman" without some of the
21 collaborative information is difficult to say.

22 Q Can Norma Villanueva assess her as having a
23 battered woman syndrome or a battered person syndrome? Is
24 she qualified to assess her and diagnose her with that?

25 A Yes, she is.

1 Q Do you agree with that diagnosis?

2 A I can't agree or disagree with what Norma's work
3 is.

4 Q Well, do you feel that this defendant has
5 battered woman's syndrome?

6 A I can't answer, yes or no.

7 Q Why not?

8 A Because my answer would be in the middle.

9 Q It would be in the middle?

10 A Yeah.

11 Q Isn't it a diagnosis? Either you have it or you
12 don't; isn't that correct?

13 A I did not -- no, it's not.

14 Q So you can be kind of ill?

15 A People can be a little anxious or severely
16 anxious. These syndromes are not concrete. That's not
17 like a broken leg whether you have it or not. My
18 diagnosis on page ten doesn't include battered woman. I
19 included that she was a victim of traumatic tress.

20 Q So at least when you wrote that, you were under
21 the impression that she was not diagnosed with battered
22 woman syndrome?

23 A Under the impression from what source I guess?

24 Q Well, it's your report. You just read your
25 diagnosis, and it's not on there. So it would be safe to

1 assume that 'on July 9, 2008 you did not diagnose her with
2 battered woman syndrome?

3 A Battered woman syndrome isn't a DSM-4 diagnosis.

4 Q Correct. But you could have made a notation to
5 it?

6 A That's not the usual practice.

7 Q Well, let's go on to page seven. You indicated
8 that there's generally six categories on mothers who
9 killed their children?

10 A Correct.

11 Q The first one is mentally ill mother psychotic
12 episode and you have ruled that one out?

13 A Correct.

14 Q The retaliating mother revenge against the
15 father, and you ruled that one out?

16 A Yes, sir.

17 Q I'll skip three because that's one we'll be
18 talking about. Let's go to four, the merciful mother, the
19 terminally ill child. You ruled that one out?

20 A Yes, sir.

21 Q Let's go to six, the unwanted or unexpected
22 mother. And you ruled that one out?

23 A Yes.

24 Q It wouldn't appear to you that this child was
25 unwanted?

1 A Are you -- again, you're asking a professional
2 opinion and my rule was to diagnose and look at the
3 mitigating circumstances.

4 Q Well, just so I can be clear, with the unwanted .
5 or unexpected mother would that translate to the mother
6 not wanting the child, even one that's already been born,
7 or is it just strictly for a pregnant woman?

8 A It would be I suppose both, you know --

9 Q Okay.

10 A That a pregnant mother could try to terminate
11 the life of the fetus, and I think in my understanding an
12 unwanted or unexpected mother that kind of a mother murder
13 occurs within those first couple of years of life.

14 Q So a two year old would fit that category?

15 A A little older.

16 Q So is it because of the age of the child that
17 you have ruled that out. Or are there other factors that
18 you ruled that out?

19 A There were no other factors that told me that
20 Mariah was unwanted. I heard nothing to that effect.

21 Q So the actual act itself, 88 days of being beat
22 to death wouldn't be a factor for you of being unwanted?

23 A It would be a factor.

24 MR. GILMAN: Objection, Your Honor. There
25 is no testimony of 88 days of beating.

1 THE COURT: Sustained.

2 Q (By Mr. Villalobos) The severe beating of the
3 child, wouldn't that be a factor of being unwanted?

4 A Well, I'm not comfortable making opinions into
5 that.

6 Q Well, you're ruling it out. Wouldn't you want
7 to at least explore the death of the child to rule out
8 that cause?

9 A Again, my focus is on understanding Mrs. Lucio
10 and trying to assist in the determination of the
11 mitigating factors, the aggravating factor of the child's
12 death is established.

13 Q Number five: The battering woman. Impulsive
14 murder with rage. You ruled that out in your report,
15 haven't you?

16 A I said that she doesn't meet the strict criteria
17 for any of those.

18 Q This brutal beating of the child does not seem
19 to you to be an impulse murder with rage?

20 A I'm not addressing those kinds of concerns. I'm
21 a psychologist. I'm addressing -- and I wasn't addressing
22 the state of her mind at the time of the offense. I'm
23 sorry. I was not.

24 Q The depressed mother postpartum syndrome within
25 first months of life, that's number three, the one we

1 skipped?

2 A Uh-huh. Yes.

3 Q Now in your report you indicated that there's no
4 evidence that a severe depressive episode accompanied this
5 incident?

6 A Correct.

7 Q So in essence you've ruled out that one as well?

8 A Correct.

9 Q So you've ruled out all six of the battered
10 woman's syndrome that you have listed here?

11 A No. These aren't battered woman syndromes.

12 Q These are partly battered women?

13 A Yes, sir.

14 Q So you ruled out the six reasons that mothers
15 would kill their children?

16 A There are more reasons. There are an infinite
17 number of reasons that a mother would do so. It's just
18 that the literature both in the United States, North
19 America and across cultures suggests that these are the
20 majority categories. So it's possible that somebody could
21 fall outside of those categories and that's what I think
22 her circumstance was.

23 Q Did you put that anywhere in this report?

24 A Yes. I put it in the first paragraph of page
25 eight, that she does not meet the criteria for all of

1 those, and that she had an episode of depression likely,
2 but there is no evidence that the episode accompanied the
3 incident.

4 Q So that's writing saying that it falls outside
5 of the categories?

6 A Right.

7 Q Above that what you just read, you indicate
8 there seems to be low probability that Mrs. Lucio
9 committed the fatal violence against Mariah when factoring
10 the personality, past history and gender?

11 A Correct.

12 Q So you have made a conclusion on your end that
13 she probably wouldn't have committed this crime?

14 A At that point based upon the psychological
15 factors, not on any other kinds of legal determination, I
16 am trying to see if -- does her profile of personality,
17 age, whole life history, all of those factors, except what
18 we would think of this is a mother who murders and I
19 didn't see it.

20 Q Okay. So you could never have predicted that
21 she would have committed this murder?

22 A No.

23 Q And you cannot predict whether she'll murder
24 again?

25 A No. I mean, yes. I agree with it.

1 Q On number 11, page 11 -- I'm sorry.

2 A Okay.

3 Q Under mitigation because you're mainly here for
4 the mitigation; is that correct?

5 A Yes, sir.

6 Q Well, let's start on page ten just so we can go
7 through the entire section on mitigation. The first
8 paragraph of mitigation you're explaining what mitigation
9 is?

10 A Yes, sir.

11 Q Okay. So that doesn't necessarily apply to
12 Mrs. Lucio. You're just telling whoever is reading this
13 report what it is -- what mitigation is?

14 A Yes.

15 Q The second paragraph when you're talking about
16 factors, again, you're explaining what mitigation is to
17 whoever is reading this report?

18 A Correct.

19 Q Going to page 11 that top paragraph goes with
20 the previous page; is that correct?

21 A Yes, sir.

22 Q The next paragraph, which would be the third
23 paragraph is, again, explanation of what mitigation is?

24 A I got lost. Excuse me, sir. On the first
25 paragraph of page 11?

1 Q Where it says: "Persons with good life
2 circumstances, with families, social or religious support,
3 you go on and you end it -- "did not compromise or average
4 expected development," that paragraph is just standard,
5 boiler plate of what mitigation is?

6 A No. I mean, it's my take on it.

7 Q I don't mean to downplay when I say boiler
8 plate, but that's an explanation of what mitigation is.
9 It doesn't necessarily apply to the defendant?

10 A You're asking me two questions or one?

11 Q I'm asking you: Does that apply specifically to
12 the defendant?

13 A It's the perspective that I am using in looking
14 at mitigation issues, yes.

15 Q The next paragraph is actually a question. Is
16 that true?

17 A Yes, sir.

18 Q A final paragraph which is five lines, that is
19 specific to this defendant; is that correct?

20 A Yes.

21 Q So that is the meat of your mitigation for this
22 defendant; is that correct?

23 A I don't -- ask again. Meat?

24 Q Yes. The meat of your mitigation factors. You
25 have a bunch of introductions as to what it is. You

1 explain somebody that has a great life and then a question
2 and then you get into about four lines about this
3 particular defendant. That's the meat of your mitigation,
4 isn't that correct, on this report?

5 A It is a summary statement, yes.

6 Q In it you stated that she reached a point in
7 which she couldn't intervene with her children and failed
8 to protect Mariah?

9 A Yes.

10 Q Are you under the -- were you under the
11 understanding that someone else harmed her and all she did
12 was failed to protect her?

13 A No. Again, I didn't address the causation.
14 What I'm trying to think that any mother would have looked
15 to that pattern of abuse and -- in a normal situation, a
16 normal mother would have protected the child.

17 Q Well, when you're -- you're hired to be a
18 mitigation expert; is that correct?

19 A Yes, sir.

20 Q Mitigation comes after conviction. Is that
21 true?

22 A Yes.

23 Q So you have to have a conviction in order for
24 there to be an issue of mitigation?

25 A Yes, sir.

1 Q Now, wouldn't it make sense for you to go into
2 the actual event, because that is what your job is, to
3 come in after the conviction to explain the mitigation?

4 A I got lost in -- what's your question?

5 Q You're saying that you did not go into the event
6 with Mrs. Lucio or with the defendant; isn't it true?

7 A Yes.

8 Q So you skipped that entirely?

9 A No. I go into the event. I did review the
10 circumstances, and I also viewed the videotape or the DVD,
11 or whatever, of her statement, but I did ask her what
12 occurred in that circumstance.

13 Q Well, but you don't -- that's part of her
14 history; isn't that true?

15 A Yes.

16 Q So the history of beating a child, wouldn't that
17 be important for you to use for the mitigation?

18 A In her statements to me, she acknowledged and on
19 the video she acknowledges hitting the child.

20 Q Again, so then you're not even considering that
21 a murder occurred when you're doing your diagnosis?

22 A Again, I'm trying -- those factors are for the
23 Court. You know, my psychologist role isn't to consider
24 whether or not it happened.

25 Q I understand that, Doctor. But your job is to

1 come in here and present mitigation based on her history;
2 isn't that true?

3 A Multiple factors including her history, yes.

4 Q Well, if her history includes a violent act, why
5 is it that you just leave that out in your determination?

6 A Why are you saying that I left it out? I guess
7 I don't get it.

8 Q Because you're not acknowledging it. In your
9 report you're saying it's failure to protect, or in your
10 opinion, low probability that it occurred in the first
11 place.

12 A Let me go back and pull out -- "Failed to
13 protect Mariah. She couldn't intervene with her own
14 children. That all of the factors, as I mentioned before,
15 her personality, the prior victimization in combination
16 with having the stress of so many children placed in her
17 care, apparently tipped the balances of factors and
18 impaired her judgment and control. That's psychology
19 speak for: Yeah. Something happened. She did it.

20 Q Ah, okay. So --

21 A The balance and control --

22 Q Impaired her control and judgment is actually
23 beating this child to death?

24 A No, sir. I'm not going -- she has been
25 convicted of that crime.

1 Q You state the stress of having so many children
2 placed in her care like -- so it was involuntary in your
3 opinion that these children were thrust upon her?

4 A No, that's not my opinion.

5 Q To have 14 children, that has to be pretty much
6 a conscious act, wouldn't you think?

7 A It could be motivated by a number of factors,
8 yeah.

9 Q On the violence risk assessment, the next
10 paragraph, the last two sentences you say: She has no
11 history of interpersonal violence?

12 A Yes.

13 Q Well, in your psychological way of talking, on
14 the paragraph above you say that there was?

15 A Yes.

16 Q So which is correct?

17 A She has an acknowledged history of striking her
18 child, but what I am referencing in there is there was no
19 history of police reports, of arrests for interpersonal
20 violence, meaning with adults, with children. She didn't
21 have a criminal record in that regard.

22 Q Well, she was brought to you from the jail.
23 That wouldn't be a history of it?

24 A At that time that I saw her she hadn't been
25 convicted.

1 Q So the next paragraph -- I mean, the next
2 sentence that event was not under consideration. So the
3 reason that we're here today which she was convicted for
4 was not even considered in your report?

5 A No. If -- no. You're wrong.

6 Q I'm wrong. Okay. Well, explain why that event
7 is not under consideration.

8 A It's a reference to the previous sentence.

9 Q Which is: "She has no history of interpersonal
10 violence."

11 A The next sentence.

12 Q Oh, we're supposed to understand that that
13 sentence goes back, two sentences back?

14 A Yes.

15 Q The last page of your report, page 13.
16 Compliance. "She has generally complied to correctional
17 rules and limits."

18 A Yes, sir.

19 Q Is that while she's locked up?

20 A Yes.

21 Q The next one: "She seems able to consistently
22 avoid misjudgments and poor behavior."

23 A Yes, sir.

24 Q You stand by that statement?

25 A Yes.

1 Q Drug use, a history of it while she's pregnant,
2 beating her child to death and that's consistently
3 avoiding misjudgment and poor behavior?

4 A Compliance implies, compliance within that
5 structured setting of a correctional facility. That's
6 exactly what I'm referencing. I'm not generalizing it to
7 the past or all those other issues. It's not uncommon for
8 people who need and have a much more diversified and have a
9 very distressing criminal history -- in the community not
10 being able to manage themselves within a locked facility
11 do fine for years and years.

12 Q The last thing you have is level of
13 incarceration. You put "severe"?

14 A Yes, sir.

15 Q Will be in strict correctional supervision, what
16 exactly does that mean?

17 A It means that she wouldn't be eligible for
18 things like a trusteeship. She wouldn't be allowed to do
19 a community program. She's not going to be seen at that
20 lowest level of criminal justice correctional facility.

21 Q Are you familiar with the system of, I guess,
22 ranking the inmates? They give them a ranking or monitor?

23 A Yes -- well, the inmates --

24 Q What is the scale?

25 A There are two components to it. One is the

1 general population and that's broken into about six areas.
2 Another one is those that have to have sanctions in their
3 security placement. And, again, those go up five to six
4 notches.

5 Q So you're aware that she could be at the level
6 right below trustee?

7 A Above it?

8 Q Right below -- well, we'll use the scale going
9 down.

10 A Okay. All right. Going down.

11 Q The trustee being highest?

12 A Yes, sir. Yeah.

13 Q She can actually achieve the ranking or status
14 or monitor label of the level right below it?

15 A And I think it's important, like you said, she
16 can achieve that. It's not something that is given to
17 her.

18 Q Well, everyone that's sent to prison starts out
19 in the general population. I'll strike that. This
20 defendant will start off in general population. Are you
21 aware of that?

22 A Yes.

23 Q So she's already in the G rankings upon
24 arriving?

25 A Yes.

1 Q And she would have to actually start messing up
2 to go down on the G rankings to get to the A rankings?

3 A Yes, sir.

4 Q And then she can continue to go up and down on
5 the G and A rankings, which was explained to us by another
6 witness. But you would agree with that?

7 A Yes, sir.

8 Q So how is it that her incarceration can be
9 stated as being severe? Is that your term just for
10 general incarceration?

11 A Yes. As I said, it's describing major felony
12 incarceration. It's not, you know, the local country club
13 farm prison setting. It's not trusteeship. It's meaning
14 that she will be under lock and key.

15 Q Well, in the prison system?

16 A Yes. That's what I mean.

17 Q But you're not saying she's going to be any
18 stricter in the prison system, than any other defendant
19 that goes in her same shoes?

20 A Let me put it this way. There are statistics
21 that are different for men and women in incarceration.
22 Approximately 70 percent of the capital murder defendants
23 are in the general population.

24 Q So she's going to -- well, I think we've already
25 gone through that. I'll strike that.

1 One of the things that you indicated for
2 her lack of -- your opinion of her lack of violence in the
3 future was her age?

4 A Yes, sir.

5 Q You supposed that she was 38 or 39?

6 A Yes, sir.

7 Q She committed this crime 18 months ago. You're
8 saying 18 months would have aged her out of committing any
9 future murders?

10 A No.

11 Q She's obviously not decrepit; is that correct?

12 A No.

13 Q You don't think she's capable of murdering
14 someone in the next 30 years or 40 years absent that
15 traumatic injury?

16 A We've talked about there's always a probability
17 that something could happen. I've already identified that
18 I think in the prison population she would be a low risk.

19 Q Well, you identified her as a low risk to even
20 commit this offense, true?

21 A I wasn't asked to assess that.

22 MR. VILLALOBOS: Judge, at this time I'll
23 pass the witness.

24 THE COURT: Mr. Gilman.

25

REDIRECT EXAMINATION

BY MR. GILMAN:

Q If an inmate is allowed visitation with family members -- they're being watched, are they not?

A Yes.

Q I mean, you can't go in a prison and it's like being in your homes. You're being watched all of the time, are you not?

A Yes. Let me qualify that. I am not an expert on Texas Department of Corrections Procedure, but when I have been in jails and prisons, I have seen family visit and it's never a solitary issue. And when I've been in prisons, it's never a solitary issue.

Q So if a family member of Melissa Lucio, for instance, a child of hers goes and sees her, that child is going to be watched, are they not?

MR. VILLALOBOS: Judge, I would object. He's already indicated that he's not aware of that. He's not an expert, so he would be speculating.

THE COURT: He just wants to see if he knows. If he doesn't know, he doesn't know.

Q (By Mr. Gilman) Answer the question, please.

A My experience has been that they are supervised visits. They may be in a community room, a large room. But there are staff there. There are video monitors going

1 on.

2 Q And if the parent/child relationship between
3 Melissa Lucio and her children is terminated by Child
4 Protective Services and the district attorney's office,
5 then there wouldn't be any kind of danger of killing
6 anymore children, would there?

7 A Part of the risk assessment that I look at is
8 the situation and the context. It's not only the personal
9 issues of the individual, but the situation. It was like
10 what you said, that reduces her risk of harming a child to
11 near zero. I cannot, in good conscious, say zero because
12 anything is possible.

13 Q If a woman were to be charged with killing a
14 child under the age of six, and that woman has her tubes
15 tied so she can no longer produce any children or has a
16 hysterectomy so she cannot produce anymore children, that
17 would certainly lower the factor also, would it not?

18 A Yes.

19 MR. GILMAN: I pass the witness.

20 **RECROSS-EXAMINATION**

21 **BY MR. VILLALOBOS:**

22 Q Are you saying that because they're supervised
23 they are not going to commit anymore crimes, people in
24 prison?

25 A No.

1 Q Because it's true they're supervised or they're
2 supposed to be at least 24 hours a day.

3 A Yes, sir.

4 Q We know that there's staggering amounts of
5 crimes that still occur in the prison system?

6 A No.

7 Q There isn't any crime occurring in the prison
8 system?

9 A No. I disagree with you saying that.

10 Q Okay. Well, you're playing word games here.
11 Tell me, is there crime being committed in the prison
12 system?

13 A Absolutely. Yes. You said "staggering
14 "amounts.

15 Q Okay.

16 A I don't --

17 Q Strike the staggering.

18 Is there crime occurring in the prison
19 system?

20 A Yes, sir.

21 Q Several thousands of crimes occurring in the
22 prison system?

23 MR. GILMAN: Objection. There is not --
24 even with their witnesses, there was never any thousands.

25 THE COURT: Sustained.

1 Q (By Mr. Villalobos) Well, would it surprise you
2 that there was 14,000 in 2007?

3 A No. I recall being or learning that there are a
4 quarter of a million people incarcerated.

5 Q And it's just 14,000 assaults in 2007. So
6 there's still other types of crimes other than assaults?

7 A Yes, sir.

8 Q So there is crime occurring even when they're
9 supervised?

10 A Absolutely. It's possible.

11 Q Well, not only possible, it does happen?

12 A Yes.

13 MR. VILLALOBOS: Pass the witness.

14 **REDIRECT EXAMINATION**

15 **BY MR. GILMAN:**

16 Q Are you aware that there's only 12,000 female
17 inmates in the prison system in 2007?

18 A No, I wasn't.

19 MR. GILMAN: Nothing further, Your Honor.

20 MR. VILLALOBOS: Nothing further.

21 THE COURT: May this witness be excused?

22 MR. VILLALOBOS: Yes, Your Honor.

23 THE COURT: You may be excused.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Call your next witness.

1 MR. GILMAN: We rest, Judge.

2 THE COURT: Does the State rest and close?

3 MR. VILLALOBOS: Your Honor, we rest and
4 close.

5 THE COURT: Does the defense close?

6 MR. CORDOVA: We close, Judge.

7 THE COURT: Ladies and gentlemen of the
8 jury, we are now at the time that I've got to prepare the
9 charge. It'll take just a little bit. I've already given
10 all counsel a copy of the charge. We just have some legal
11 issues to take up. As soon as we are done with that, we
12 will proceed with the next stage. So you have a break
13 right now a little bit early. It will probably be about
14 15 to 20 minutes.

15 **(Jury not present at 2:07 p.m.)**

16 MR. CORDOVA: Your Honor, before you get
17 into the charge conference, Norma Villanueva is still
18 here. Can she be released now?

19 THE COURT: Now that both parties have
20 rested and closed, yes.

21 MR. CORDOVA: Your Honor, I just want to
22 ask --

23 THE COURT: Yes, sir. Okay. Would you
24 like to put something on the record?

25 MR. GILMAN: Yes, sir. Judge, I would like

1 to renew my motion for instructed verdict. I don't think
2 that the State has shown improvement as per Berry that
3 she's a future dangerousness.

4 THE COURT: I understand.

5 MR. PADILLA: Your Honor, in the case of
6 law, I think 3707 (1) clearly states that the Court shall
7 provide those questions and I think the answers.

8 THE COURT: I'm going to overrule the
9 motion for directive verdict at this time.

10 MR. GILMAN: Thank you.

11 THE COURT: All right. Now moving on to
12 the charge conference. Do you have any proposed requests
13 for instructions or questions? I've not received any from
14 either side.

15 MR. PADILLA: We have none, Your Honor.

16 THE COURT: Be seated. I apologize. We
17 are going about our businesses and I didn't even notice.

18 MR. PADILLA: The State has reviewed the
19 proposed charge. My understanding is that we have now
20 gone to two special issues. One concerning the law of
21 parties has been removed from the Court.

22 THE COURT: That's correct.

23 MR. PADILLA: Based on that information to
24 the Court, we have no objections to the form of the charge
25 and also to the form of the verdicts attached thereto.

1 THE COURT: Mr. Gilman, do you have any
2 proposed or request for instructions?

3 MR. GILMAN: No, Judge. No, sir.

4 THE COURT: Do you have any objections to
5 the charge as proposed by the Court?

6 MR. GILMAN: No.

7 THE COURT: I will go ahead and have copies
8 made for the jury. How much time does each side need?

9 MR. PADILLA: We would ask for an hour,
10 Your Honor.

11 MR. GILMAN: Judge, we didn't even use an
12 hour in the guilt or innocence. I would ask for 15
13 minutes.

14 THE COURT: I will give half an hour to
15 both sides.

16 MR. PADILLA: Would the Court -- can we ask
17 for 40 minutes, Your Honor?

18 MR. VILLALOBOS: Your Honor, this is a
19 capital murder case, Your Honor. This is not a normal
20 case. I think we should be allowed to have --

21 THE COURT: On the guilt or innocence you
22 took 40 minutes. They took 40 minutes. Mr. Villalobos.

23 MR. VILLALOBOS: And you are reducing it to
24 the -- for the asking of a capital murder, Your Honor.

25 THE COURT: I'll give you 40 minutes.

1 Fine. Your point is well made. I will give you 40
2 minutes, but I am not going to increase it.

3 MR. PADILLA: The Court will allow to split
4 three ways if you want?

5 THE COURT: Sure. You can split it any way
6 you want.

7 MR. PADILLA: Thank you, Your Honor.

8 THE COURT: I just need to know how much
9 for each -- what kind of warning you need and that's fine.

10 MR. VILLALOBOS: Can we have a moment to
11 discuss that?

12 THE COURT: Of course, you can. I've got
13 to get copies of this made anyway.

14 MR. VILLALOBOS: Thank you, Your Honor.
15 The State is going to be dividing ten, ten and 15.

16 THE COURT: How many?

17 MR. PADILLA: Give me two minute warning.

18 THE COURT: Three minute warning,
19 Mr. Villalobos?

20 MR. VILLALOBOS: Yes, Your Honor.

21 THE COURT: Mr. Gilman, are you ready?

22 MR. GILMAN: Yes, sir. Okay.

23 THE COURT: Everybody get ready for the
24 jury to come in. All right. Bring the jury in.

25 **(Jury present, defendant present at 2:19**

1 p.m.)

2 THE COURT: Let the record reflect Case
3 Number 07-CR-885 by the State of Texas versus Melissa
4 Lucio, the defendant is present and along with counsel.
5 The State is being represented along with counsel. The
6 jury is seated.

7 Ladies and gentlemen of the jury, all of
8 the evidence is now before you. I remind you of the
9 instruction that you had before. Violations of
10 instruction would cause this case to have to be retried
11 again. So please I remind you, don't do it. And if you
12 see any violations of these instructions, stop immediately
13 and inform the Court.

14 I am now going to read the Court's charge
15 in this case. The State of Texas versus Melissa Elizabeth
16 Lucio.

17 (Punishment Charge Read)

18 THE COURT: You will now listen to
19 arguments of counsel. Mrs. De Ford, would you proceed?

20 MRS. DE FORD: Yes, Your Honor. Thank you.

21 Ladies and gentlemen, on behalf of
22 Mr. Villalobos and our office, I thank you for a verdict.
23 It is a true and just verdict in this case. I thank you
24 for hearing Mariah's call for justice. I want to take you
25 back to the beginning of this trial, and I want to talk to

1 you about what the defense told you.

2 The defense argued at the beginning of this
3 trial that Mariah died of injury to the child. She was
4 beaten. Now, the first expert told you that the defendant
5 -- there is no history of aggression at all. She's
6 obviously wrong. That's not what the defense told you.
7 That's not what the video shows. And she demonstrates on
8 that video how she hit that little girl time and time
9 again. There is history of aggression. Mariah's death is
10 proof of that. What can you conclude from the first
11 expert's testimony? She is simply wrong. She got it
12 wrong.

13 The next expert tells you: No history of
14 violence. Again, remember what Mr. Gilman himself told
15 you? She's guilty of injury to a child. She's guilty of
16 beating that little girl. Well, obviously this expert got
17 it wrong, too. He tells you, well, posttraumatic stress.
18 She's suffering from stress. She's suffering from
19 depression. She also might have battered wife syndrome.

20 What can you conclude? Look at Mariah.
21 You've seen the photographs. No history of violence?
22 Really? Are we talking about the same person, the same
23 defendant? They got it wrong.

24 I want to talk to you about Mariah and the
25 nature of this crime against her. Because we've all seen

1 the photographs. We heard from Dr. Vargas who told us
2 it's the worst he's ever seen in his 30 years. Dr. Farley
3 told us the same thing. Worst case of child abuse ever in
4 our community. Look at this little girl. Look at her.
5 She was defenseless, innocent. Her daughter.

6 The nature of this crime speaks for itself.
7 She was beaten to death. This is not one time.
8 Deliberate acts, over, and over, on this poor little girl.
9 This is a crime of hatred. A crime of violence. Not just
10 one time. Not an accident. The manner of death of which
11 this little girl died is also tragic. It's also horrific.

12 There's many of you on this jury that work
13 in the medical field and can understand the suffering that
14 she endured from her little brain swelling. Dr. Farley
15 told you that brain swelling inside her head, went into
16 her spinal cavity, she would have suffered. She would
17 have trouble breathing. She would have seizures and just
18 lay there. She let her lay there and suffer.

19 A very painful cruel death. That is what
20 is so horrific about this case, that this little girl laid
21 there in that bed when she could have simply called for
22 help, taken her to the doctor, done something to protect
23 this little girl. The manner of death in this case is so
24 horrific because she suffered for so long, this little
25 baby girl. It was simply torture and cruel.

1 I want you to think about that as you're
2 considering the decision in this case. Excuses. She was
3 frustrated. She was poor. Ladies and gentlemen, many of
4 us in this community grew up poor, have parents that did
5 whatever they could to make it and we survived. The
6 problem in this case she was getting money. She was
7 getting food stamps. She was getting benefits.

8 They were using all of that money for
9 cocaine. Being poor is no excuse for what occurred here.
10 Use your common sense.

11 All of us have gone through periods of
12 struggle in our lives, periods of frustration. We don't
13 go around beating up little innocent children to get rid
14 of that frustration. Inexcusable. That's what it is,
15 inexcusable. We know the defendant's true character by
16 this offense, about what she has done.

17 The paramedics told you, that little
18 sergeant. That EMT said: I wondered when we were in the
19 ER what happened to this little girl and I said to her:
20 Go in peace. They told you that when they got there, this
21 little girl was laying at the foot of that apartment on
22 the floor by herself without any comfort like a broken
23 doll. They didn't even know who the parents were because
24 no one was around. Imagine what those last few moments of
25 that little girl's life must have been. That is what is

1 so horrific about this case.

2 And look at her confession. Look at her
3 demeanor. After the verdict, Officer Borrego told you,
4 well, she slept fine. No problems. What did that tell
5 you of how coldhearted she is? It speaks for itself.
6 Even their own expert told you she shows no sadness, no
7 remorse for what she has done to this little girl.
8 Unbelievable. Consider the very tragic circumstances in
9 this case.

10 I want to talk to you about the
11 continuing -- the things Mr. Merrillet talked to you
12 about. He told you about the crimes that happens in
13 prison. The same crimes that happened in our community
14 happened there. And I want you to look at her jail record
15 because this jail record speaks to you about the type of
16 person that she is. And in the short time that she's been
17 in jail she has had physical altercations, verbal
18 altercations, been in possession of contraband,
19 unauthorized communication, inciting a riot, and
20 confrontational towards the staff. What does that tell
21 you about the type of person that she is now? And that's
22 only here in our jail. Imagine what she's going to be
23 like when she gets to Huntsville or wherever she ends up.
24 Look at these records, because they records speak for
25 themselves.

1 This defendant is like a dog that bites a
2 human person. Once that dog bites, they will always have
3 -- there will always be a probability that it will bite
4 again. Same thing with this defendant. Her record speaks
5 to you, and tells you: This isn't going to end here.
6 This isn't going to end with Mariah. This is going to
7 continue.

8 I want to talk to you about Mariah and
9 about her life because this is what this case is really
10 about, about her life. Mrs. Castillo got up here and she
11 told you about that little girl. And we all got to meet
12 Mariah, like what a happy child she was. How she loved
13 attention. How she loved to give hugs and kisses. How
14 she had a hearty appetite. And that's why she called her
15 my "Gordita".

16 This defendant has ended that life without
17 remorse. Has taken away anymore birthdays for that little
18 girl. No future proms, nothing. She's been robbed of her
19 future by this defendant.

20 THE COURT: Two minutes, Counselor.

21 MRS. DE FORD: Thank you, Your Honor.

22 During jury selection we talked about what
23 might come, that you might have to consider the death
24 penalty. And each and every one of you told us that if
25 the circumstances merited it, you could consider it. I

1 ask you to have the courage to consider it because this
2 case deserves it. I want you to look at all of the
3 circumstances in the case because this case, the nature of
4 the crime, the victim was so innocent and blameless, the
5 way that she suffered merits that she deserved -- that she
6 get the death penalty. And I ask, again, for justice for
7 Mariah. And I ask each and every one of you on behalf of
8 Mr. Villalobos and everyone in our office that you
9 consider it, and that you have the courage to do what is
10 just and right. Thank you for your time and thank you for
11 your service.

12 THE COURT: Mr. Gilman?

13 MR. GILMAN: Are they through with their
14 opening?

15 THE COURT: No. they're reserving their
16 time.

17 MR. PADILLA: We're reserving our time.

18 MR. GILMAN: I didn't hear that.

19 THE COURT: I apologize. I assumed.

20 MR. CORDOVA: Judge, I don't believe that
21 I'll take more than ten minutes, but if I do, if the Court
22 would advise me, please, at ten minutes.

23 THE COURT: Yes, sir. How much time or
24 notice do you need?

25 MR. CORDOVA: Just one minute before.

1 THE COURT: Okay. Yes, sir.

2 MR. CORDOVA: Good afternoon.

3 PANEL MEMBERS: Good afternoon.

4 MR. CORDOVA: My name is Adolfo Cordova.

5 I've been relatively quiet throughout this trial. You all
6 have heard very little from me, but I felt it infinitely
7 important to get up and talk to you all about it this
8 matter.

9 I, like Mr. Gilman, respect your verdict.
10 I don't necessarily have to agree with it, but I respect
11 it. But I think that in closing arguments that you've
12 heard and the evidence that has been presented during this
13 punishment phase and carried over from the
14 guilt/innocence, this is an emotional case. And they tug
15 on your emotional heartstrings here. If we take out all
16 of the facts other than the fact that we have a
17 two-year-old child that's dead, we would all agree it's a
18 tragedy.

19 I'm not here to belittle that. But there
20 are certain circumstances here that make this more of a
21 tragedy. But this is a tug on your heartstrings here.
22 Again, everything that you are to consider comes in as
23 facts from this witness chair. You are to decide the
24 questions that you're being asked beyond a reasonable
25 doubt. That includes the questions that you're being

1 asked to answer now. The two questions.

2 The first question has to do with future
3 dangerousness. What have we heard one scintilla of
4 evidence as to future dangerousness of this person?

5 We had the guy, Mr. Merrillet, or whatever
6 his name was, from Conroe. If you take his own
7 statistics, he never spoke about Melissa specifically.
8 Never once did he talk about her. In fact, he came up
9 here and told you, I'm not going to talk about her. I
10 don't know her life. So he gives us statistics.

11 What are the statistics he gave us about
12 the future dangerousness of criminals in general? He told
13 us there are 12,000 female inmates in the Texas Department
14 of Corrections as of 2007. That's 12,000. How many
15 assaults were there in that population? Seventeen. That
16 is one one-hundredth of a percent.

17 What else do they bring you here? They
18 bring you the jail records. This is one thing where I
19 agree with the State. Please, look at Melissa's jail
20 records. Look at them. They bring to you that she was in
21 a dorm with eight people and they found tattooing
22 equipment above the lights. None of the girls would admit
23 to having been the owner of it. So that is evidence of
24 future dangerousness? Oh, but she was in a fight. Look
25 at the fight. You all look at them. I saw you all

1 looking at the records. She got in blocked punches in one
2 of the fights. The other one, the girl hit her. Please.
3 There's not a scintilla of evidence of future
4 dangerousness, much less beyond a reasonable doubt.

5 What else do they bring here of future
6 dangerousness? To answer question number one, she's got a
7 past history, a criminal history. What was that? A DWI.
8 If we poll the people in this courtroom today sitting
9 here, throughout this courtroom there would be a good
10 number of folks who've gotten a DWI. It doesn't mean that
11 they are a future danger. It's not a crime of moral
12 turpitude.

13 What didn't they show you? They didn't
14 show you one past act of physical abuse to any children.
15 Not one. They didn't show you one past act where she's
16 ever been charged with a crime involving any physical harm
17 to anyone else.

18 The second question that you are going to
19 be asked to answer is regarding mitigation factors.
20 Mr. Gilman will address all of these things much better
21 than I. Much more intensely than I. But I ask you to
22 consider her history, her background. Is being poor an
23 excuse? Absolutely not. Is being hooked on drugs an
24 excuse? Absolutely not. There is a mechanism there for
25 helping this family that we've all heard extensively about

1 in this courtroom, and that mechanism didn't get involved
2 and didn't care enough to help anybody here.

3 If you look at the evidence that you've
4 been presented in regard to her future dangerousness
5 mitigating factors, there's no question that beyond a
6 reasonable doubt that the State has not met that burden.
7 Thanks for your attention.

8 THE COURT: Mr. Gilman.

9 MR. GILMAN: Good afternoon.

10 PANEL MEMBERS: Good afternoon.

11 MR. GILMAN: Both sides have 40 minutes and
12 in 40 minutes we have to sum up what we want you all to
13 consider in the jury room. I would like to bring your
14 attention to the word "probability". During voir dire --
15 during the beginning stages of this trial, I asked you or
16 I tried to ask each one of you what probability meant.

17 And the only way I can ask is: Is there a
18 probability that we're going to have a hurricane this
19 year? Or a possibility that we're going to have a
20 hurricane this year? And there's a possibility that we're
21 going to have a hurricane this year. Because a
22 "probability" means a likelihood. There's not a
23 likelihood. There's a possibility that we may have a
24 hurricane, but not a probability. That's real important.
25 It's a more assured thing if it's a probability. There's

1 a possibility that we could get in an automobile accident
2 driving home tonight. Is there a probability? Heck, no.
3 Because if there were a probability, we wouldn't get in
4 our cars and drive home. We'd probably all take a walk.
5 And some of us it would take all night to get there. So
6 there's a possibility that we can get in an accident
7 tonight. Not a probability. A probability is a pretty
8 sure thing.

9 Now during the testimony the State brings
10 in, Mister Conroe -- whatever the gentleman's name -- the
11 investigator from up in the prison system, and he told us
12 about some statistics, which I think I really need -- I
13 love it when people bring statistics on me, because he
14 says that there's a little less than 160,000 people in
15 prison. I think it was 156. But I rounded it off to 160,
16 it makes my math easier. Of that there's only 12,000
17 women prisoners. 12,000. If we do the math there, it
18 comes out to seven -- to eight percent of the population
19 in prison are women. So those women that are sitting on
20 the jury, that just goes to show you women are better at
21 conducting yourselves than us men because we seem to get
22 into more trouble than you.

23 Okay. Now, how many assaults were there
24 last year? He says there were 17. Seventeen assaults.
25 And if we take the 12,000 females, divide that into the 17

1 assaults, we're going to get that percentage of -- this
2 number, roughly. Okay. So what is that percentage wise?
3 It's a .01 percent.

4 All right. This is Brownsville.
5 Brownsville has roughly 150,000 to 200,000 people. If we
6 take the same percentage, that means we're going to have
7 15 to 20 assaults in a year. Fifteen to 20 assaults in a
8 year. The Brownsville Police Department would have a
9 holiday if they found out that they were only going to
10 have 15 or 20 assaults this year. They have that on any
11 Friday or Saturday night.

12 So the point here is the likelihood of an
13 assault occurring in prison is less than that occurring
14 here in our own community, in Brownsville. I'm sorry I
15 didn't do the statistics for the Harlingen, San Benito or
16 every other community we've got in the county. But I'm
17 thinking Brownsville because I'm more familiar with the
18 number of people that we have here in Brownsville.

19 What is the probability -- because that's
20 the issue here -- of Melissa Lucio committing greater acts
21 of violence? If it's one one-hundredths of a percent,
22 that's pretty slim. Pretty slim.

23 Child Protective Services is a state
24 organization. A State organization is supposed to go out
25 and they have a mission statement to protect all of our

1 children in our community. I'm not real happy with Child
2 Protective Services. I'm sorry. But if you have a
3 different feeling about them, please keep with your own
4 feelings. But Child Protective Services is represented by
5 the district attorney's office. Child Protective Services
6 attorneys are in the district attorney's office. They
7 filed an action to terminate the parent/child relationship
8 between a mother, and father and their children. They
9 have filed a petition to terminate the parent/child
10 relationship between Melissa Lucio and her children. They
11 haven't done anything on it for quite some time. As a
12 matter of fact, it was done back in 2004 when Mariah was
13 born and they haven't done anything.

14 Now, I could sit here and complain about
15 Child Protective Services, but that's not an excuse and I
16 don't mean it to sound as if it's an excuse because I'm
17 not trying to make excuses for Melissa Lucio's actions.
18 You found her guilty of this offense. But now the
19 question is: What are we going to do with Melissa Lucio?

20 And you've got two choices. Is there a
21 probability of continuing acts of violence? Probably not.
22 We've heard that from the State's main person who they
23 bring down because just from the statistics, there's no
24 probability. We heard it from Dr. Pinkerman who also said
25 there's very little probability that she would ever do

1 anything of violence.

2 So then we go into the next issue, and
3 that's dealing with the personal, moral culpability of the
4 defendant. There is sufficient mitigating circumstances
5 or circumstances to warrant that a sentence of life
6 imprisonment be awarded.

7 When you're little -- and if you have
8 brothers and sisters, and I guess, depending on if you are
9 the youngest or the oldest, your parents will say: You
10 don't hit your brother or your sister. Or, if they hit
11 you, you get in trouble if you're the oldest because you
12 hit them back. And don't your parents say: Two wrongs
13 don't make a right. Two wrongs don't make it right.

14 Mariah is dead. I'm sorry for that. I
15 really am. She was a little girl, and she was just
16 starting out in her life. But we're not going to bring
17 her back. There's no way we can bring her back. But I
18 have 13 other children that were born by this woman. And
19 yes, she's probably going to have her rights terminated on
20 them, but at some point those kids want to go and see who
21 there mother is. And I hope they go and look to find out
22 who their mother is. And I'm hoping that you come back
23 and find her -- that you allow her to live in prison so
24 that those kids can somehow connect with their mother and
25 get some sort of an understanding of why this all took

1 place, because they've got some heavy duty talking to do.
2 Some really heavy duty talking.

3 There's things said in this courtroom that
4 these kids have never heard before. There's things said
5 in this courtroom that the mother of Melissa Lucio has
6 never heard before. That the sisters never heard before.
7 The system is failing, folks, if all we do is we go out
8 there and say: Let's kill her. That may be your gut
9 feeling. Maybe you're infuriated with somebody who kills
10 a child. And that's understandable. But that's not the
11 legal question. The legal question is: Whether there's a
12 probability of continuing acts of violence.

13 And then, what do your moral tell us? What
14 do your morals tell us? Do we kill somebody else because
15 they, themselves, have killed? I don't think that's what
16 the legislature intended when they made this law. I think
17 what the legislature is wanting to do is, they're saying
18 if we can't have this person alive anymore because of
19 their continuing violence, then we have no alternative but
20 to terminate their life.

21 Is Mrs. Lucio at that point? I think not.
22 I think not. Take a look at the jail records. I think
23 the jail records are interesting. Mrs. Lucio did not know
24 she was being categorized. I'm surprised that counsel
25 even brings up the fact that every 15 or 20 minutes

1 somebody is going by and checking to see if she's asleep
2 or not or if she's lying down. How many times are you
3 depressed and you're upset and all you want to do is just
4 lay down? And now they're trying to use that against her?

5 If you're wondering what happens to the
6 rest of your life because you are found guilty of a
7 capital murder, what are you going do? It's not like you
8 can stand around in the jail bars and bang on the wall.
9 If she had done that, the State would be up here telling
10 you that she has continuing acts of violence. She's
11 banging on the door. She's rattling the cages. This
12 person is going to be caged up, folks, for the rest of her
13 life with no chance of ever getting out. Do two wrongs
14 make a right? I think not.

15 I ask you to answer these questions. No,
16 there's no probability that Melissa Lucio will have
17 continuing acts of violence. And I ask you to answer the
18 second question, yes, there are mitigating circumstances.
19 Don't cut those 13 children off from checking their roots.
20 We learn a lot from our parents regardless of where they
21 may be. But isn't it better to ask questions so you can
22 learn from her, for those kids to be able to ask Mom:
23 Why, Mom? Why did you do it? And get some sort of an
24 answer so they can somehow understand. Thank you.

25 THE COURT: Mr. Padilla.

1 MR. PADILLA: May it please the Court and
2 the counselors. Ladies and gentlemen, again, I first and
3 foremost thank you very much for your verdict. I feel
4 it's the only appropriate verdict in this matter.
5 Furthermore, it took us about four and a half to five
6 weeks to pick the 12 of you to sit here in this trial.
7 And we picked you because the State felt that you would
8 consider the evidence, would consider all of the cases.
9 And we asked you from day one we were going to ask at the
10 end of the trial when the evidence is heard, that we are
11 going to ask that the Defendant be sentenced to death.
12 That's how we started off and that's what we are
13 mentioning it here.

14 And we also told you that the State, even
15 if it's a capital murder case, doesn't always ask for
16 death. The State can abandon a request for death, but
17 there are some crimes that are so vicious, so inhuman that
18 the State must ask for the death penalty. The State has a
19 burden to make sure that people follow the law because
20 we're a system of laws. We've got to live with the law.
21 It's not a dog eat dog world out there. If you don't
22 follow the laws, there are consequences.

23 And don't come in here and complain after
24 you committed a criminal violation. You know what? I
25 shouldn't be sentenced to this. I shouldn't do this

1 thing. You know? Why? Because the laws are out there
2 for everybody. So it shows you because we know that this
3 is a difficult decision, but we have -- the State of Texas
4 has complete faith in you that once you look at all of the
5 evidence, the only appropriate verdict in this case is a
6 sentence of death.

7 This child suffered. This child was
8 humiliated. This child was murdered in a brutal fashion,
9 ladies and gentlemen. If it was a situation where, let's
10 say, Mrs. Lucio needed money for her cocaine habit and she
11 walked in and shot a Circle K person, we would be talking
12 about a different matter. That's not what happened here.
13 This child was brutalized.

14 They're telling us: Oh, well, we're
15 pulling on your heart. I offered a minimal amount of
16 pictures to you here today during the trial just to
17 demonstrate the injuries that this child suffered. We are
18 not trying to infuriate you. But what we are asking for
19 is some justice here, because -- isn't that what's
20 required?

21 And, you know, defense comes in and gives
22 you numbers. You know, it's funny. They pick 17
23 assaults. Well, ladies and gentlemen --

24 MR. PEREZ: Objection. The defense didn't
25 pick them. This is the --

1 MR. PADILLA: Judge, they are picking the
2 17 assaults --

3 THE COURT: Mr. Padilla, move on.

4 MR. PADILLA: Thank you. They paint the 17
5 assault numbers. But, guess what? They didn't pick up
6 the sexual assaults. They didn't pick up murders. They
7 didn't pick drug paraphernalia, drug possession. Yes.
8 Let's go over the lowest number possible so we can make it
9 seem like it's only 15 or 20 violations.

10 Mr. Merrillet said: You know what? I
11 don't get paid to come and testify. I work for the
12 special unit. And all he does, is come in court and
13 prosecute criminal defendants who have violated the law.
14 His involvement was here to give you a sense, and a feel
15 of what happens within the penitentiary, because all of
16 the type of the offenses that occur in the free world
17 occur within the penitentiary. Okay?

18 So then the question becomes -- and we
19 discussed that issue with you, ladies and gentlemen --
20 that society in this instance involves where the person is
21 incarcerated. That's that person's society. Is this
22 person a continuing threat? If you're a cold-blood
23 murderer, show some remorse. Because I think -- if you're
24 really going to mend, and you're going to change your
25 life, you're going to accept -- the first thing you've got

1 to do is accept that you did something wrong because
2 nothing never changes. Because if you think what you did
3 was right, how are you going to change?

4 Show some remorse. Show some feelings.
5 Show some burden. That, I think, is tantamount on whether
6 you've accepted your punishment, and you've accepted your
7 verdict, and you will go on with your life and carry on.
8 That's what you have to look at.

9 As we sit here, the defense brings us
10 certain witnesses. Mrs. Villanueva testifies to you:
11 Well, you know what? It's real easy for me. I'm going to
12 do a social study, and I'm going to come up with a reason.
13 And I didn't even come up with a reason as to why she did
14 it. She even testifies to that -- other than the fact --
15 that she didn't do it. But you know what? If she did do
16 it, because she was sexually assaulted as a child. And
17 because, you know what? She was also a battered woman.

18 Ladies and gentlemen, is there any evidence
19 to that? She didn't talk to a single individual,
20 Mrs. Villanueva did, to ascertain that. But you know
21 what, it fits good into a pattern for the defense.

22 Well, you know what? And I've talked to
23 you during the first part, about the rabbit trails out
24 there. Let's bring up this issue that she was sexually
25 assaulted, and they bring up this issue, and that she's a

1 battered woman, and that maybe the jury will buy it, and
2 say: You know what? Hey! That's the reason why she did
3 it.

4 What evidence is out there that's the
5 reason why she did it? They'll never know why she did it.
6 We don't have to establish motive as to why she did it.
7 But she did it. And it wasn't because she was a battered
8 woman. Because as the doctor stated to you, that he
9 looked at all of the testing -- at all of the six,
10 different, possible grounds that may have been to
11 establish her culpability. And lo and behold, none of
12 them apply to her. They may be from outside of that
13 funnel that they're just leading you to. So there is no
14 evidence at all concerning the issue of the battered
15 woman.

16 And secondly, the issue about the sexual
17 assault, what evidence is there? Ladies and gentlemen,
18 the defense would also ask you: Well, she never violated
19 the law. Every time she purchased cocaine that was a
20 violation of the law. Every time she consumed cocaine, it
21 was a violation of the law. If She didn't cause, is a
22 different matter. But they were ready to say: You know
23 what? We have one assault, and one assault only, and --
24 Dear Lord! We're trying to kill somebody who one assault
25 no there's a strong litany of violations out there because

1 the evidence clearly shows -- if You take back those CPS
2 reports, and if they really love the children -- if she
3 really loved the children as she is now attempting to make
4 you believe, well I need to see my 13 children. First and
5 foremost, she would have fed them, she would have clothed
6 them, she would have taken care of them, she would have
7 used the food stamp money to take care of those children.
8 She would have used her AFDC funds to take care of these
9 children. No. What were they doing with it?

10 Smoking it. That's what they were doing
11 with that money. Whose fault is it that they were doing
12 that? It's her fault. And they come in here and trying
13 to blame CPS. Oh, CPS should have this, and CPS should
14 have done that. CPS didn't lay a hand on this child. And
15 yes maybe they committed an error in returning this child
16 to her. But you know what? She's the one that battered
17 this child. She's the one that bit the child. She's the
18 one that pounded that child until that child died. Is
19 that CPS's fault. It's not.

20 Well, the State of Texas -- CPS is
21 represented by the district attorney's office. So what?
22 But they're trying to say -- they're trying to blame us.
23 The district attorney's office? We're here to prosecute.
24 We're doing what the law requires us to do. But for them
25 to come in here and try to dissolve themselves of all

1 liability by trying to blame CPS, is unfortunate, not
2 true.

3 And this is just a last ditch effort to
4 attempt to absolve themselves of any liability. We did
5 nothing wrong. She did nothing wrong. All she did was:
6 She spanked the baby, as Mrs. Chavez said.

7 That's not what happened out there. Don't
8 come in here and try to pull the wool over your eyes,
9 because you heard the evidence. You're strong enough to
10 make this decision. And we sat here for four and a half
11 weeks. And when we brought you in here, we discussed
12 this. And we told you that you were going to have to
13 answer this question, whether there is a probability that
14 the defendant would commit acts of violence that would
15 constitute a continuing threat to society. And we talked
16 about probability, and we discussed it. And I told you --
17 and I gave you a "more likely than not" definition. Then
18 number two had been taken out because it's not all
19 parties, and we discussed that too. Okay?

20 And then the other question that was going
21 to be asked to answer was whether to take into
22 consideration all of the evidence including the
23 circumstances of the offense. The circumstances of it. I
24 told you look at that. Look at the gruesomeness of the
25 killing.

1 This wasn't an isolated incident where she
2 lost it and she killed this child. She made this child
3 suffer. Every time she injured this child she had to have
4 gotten some pleasure from it because she didn't do it one
5 time. She did it over a period of weeks and probably
6 months.

7 Is this a person that you want out there in
8 a society of prisoners? She has already shown a tendency
9 to be violent, ladies and gentlemen, to be abusive, to be
10 aggressive and to injure innocent people. She's just as
11 likely to go after innocent -- other innocent individuals,
12 people that may be within the prison system. Because
13 Mr. Merrillet has told you that they don't classify them
14 by capital murder. They can put him in with a burglar,
15 with somebody who's writing hot checks. She can victimize
16 other individuals.

17 So, therefore, getting back to the issue at
18 hand, look at the moral culpability. Look at the
19 circumstances surrounding that. And also, you've got to
20 look at the situation where all the circumstances of the
21 offense, her character, her background and whether there's
22 any mitigating factors in her favor.

23 What are the mitigating factors in her
24 favor? Oh, I want to be spared from the death because
25 I've got 13 children out there. What has she ever done

1 for the 13 children? She's using the 13 children now to
2 get away from her responsibility. What has she done for
3 them. Did you hear Mrs. Villanueva come in and say: You
4 know what? I've interviewed. Pursuant to the children,
5 they want to be with their mother. They want her here.
6 Do they miss her? No. The children are carrying on with
7 foster parents. And they're probably having a better life
8 than the life they had with Mrs. Lucio, and Mr. Alvarez.

9 Because all they were ever involved with
10 was drug possession, drug use and drug paraphernalia.
11 That's all they would do. They didn't care about the
12 children. You know what the children guaranteed them?
13 The food stamp money that you can convert to drugs, and
14 the AFDC check that you can convert to drugs. That's what
15 the children represented to them. Because they sure as
16 heck weren't feeding them. They weren't caring for them.
17 They weren't taking them to the doctor.

18 So why would you want to have 13 children
19 with you? Because the State of Texas gives you that
20 money. And because -- and that's evident by the fact that
21 they were evicted under the investigation for failure to
22 pay their rent. That the house was a pigpen according to
23 some of the reports. Why? If you're getting 24 or \$2,500
24 a month, and they're working, why do they not have the
25 resources to buy groceries? It's bad for cocaine.

1 THE COURT: Three minutes.

2 MR. PADILLA: Three minutes? That's all
3 the children to them. The children represent to them
4 cocaine. Money. Money. That's all it was.

5 So it's unfortunate. It's difficult. I
6 wish I was out fishing somewhere and not having to worry
7 about this case and the 12 of you would like to be
8 somewhere else besides here.

9 But you know what, it's gut check time.
10 You've got to look inside of you and say: You know what?
11 This is not what we allow to happen in Cameron County,
12 Texas. You have to send a message. And I talked about
13 disposable children. There is no such thing as a
14 disposable child in this world, ladies and gentlemen,
15 because there's always somebody that wants that child, if
16 you just take the effort to help that child.
17 Unfortunately, that did not happen to Mariah. But I think
18 that if she were here, she would ask for justice.

19 She doesn't want to be on death row?
20 That's unfortunate. She brought it upon herself. She
21 brought it upon herself. She has nobody to blame but
22 herself. She can't blame the 12 of you. She can't blame
23 the State. She can't blame CPS. She can't blame the
24 public. She can't blame her landlord. The only person
25 she needs to blame when she goes back to her cell, is just

1 look in the mirror. She brought it upon herself. She is
2 responsible for these acts. These acts require justice.

3 So when I ask you, ladies and gentlemen,
4 when you go back there because you promised me that you
5 would consider all of the evidence in this case, is decide
6 that: Yes. She is a threat to society. And, no: That
7 there are no mitigating factors in her favor for a life
8 sentence over death. Because that's what the evidence
9 shows. That is what is required morally of all of us, to
10 look at the evidence and to decide the case based upon the
11 evidence and make this wrong a right. Not two wrongs.
12 We're making one right into a right.

13 I ask you to go back there and decide the
14 case. And, again, it's: "Yes. She is a continuing
15 threat to society. And, "no, that there are no mitigating
16 factors in favor of life over death.

17 Ladies and gentlemen of the jury, thank you
18 for your attention. I look forward to your verdict.

19 MR. VILLALOBOS: May it please the Court,
20 Counsel? Good afternoon, ladies and gentlemen. I, too,
21 want to thank you. I know I thanked you before. But this
22 is the second part of the trial that is very, very
23 difficult to go through because you are having to decide
24 this person's fate of what the law allows you to decide.

25 But you have to remember what this trial is

1 about. We've had several witness experts who have come
2 and are paid to testify to give their opinions of what
3 should happen to this person or how this crime occurred.
4 You have seen the attorneys, the different personalities,
5 even the Court. That's not what this trial is about. You
6 need to put that behind you. Our personalities, our
7 fights, our discussions with these experts. Focus on what
8 this case is truly about. It's not about the 13 kids.
9 It's not about whether Pinkerman or the guy from the jail
10 is a good guy or not. It's about the murder of Mariah.

11 The defense and most of the witnesses don't
12 want you to even think about that. They want you to think
13 about why we're here, and that's being emotional.

14 They don't even want to consider it when
15 they're doing their testing, when they're trying to decide
16 whether or not this person was violent. They don't even
17 want to consider the fact or the reason that we're here in
18 this courtroom today. They want to bypass that. They
19 want to kind of just gloss over that, and say: Well, her
20 history, her violence, everything else in her past, there
21 is a low probability that she'll do any sort of violent
22 action.

23 Well, they're wrong right out of the chute.
24 Based on that past, what did she do? Beat this child to
25 death! And we don't use that lightly, ladies and

1 gentlemen. Beating somebody to death, a punch, a kick in
2 the stomach. You've seen the pictures. You can go back
3 and look at them again. The autopsy report they showed,
4 it's almost like they colored when a child colors a
5 coloring book, on the diagram. That is a brutal beating
6 of a child. Dr. Farley told you how her arm was broken,
7 how she had to survive with an arm being broken, the pain
8 of that arm moving without a cast, without a splint. And
9 they want you to just: No. Don't think about that. If
10 that upsets you, and if it gets you mad. It should.
11 Don't apologize for being mad about that. I'm not.

12 They want you to say: Don't focus on
13 emotions, but she's here crying now. But when she's not
14 in front of you, what does she do? She sleeps like a
15 baby. She doesn't show sadness. She doesn't show
16 remorse. But when she's in front, let's turn on the
17 tears. Where were those tears when she was beating
18 Mariah?

19 Focus on why we're here. The act itself --
20 the act itself -- is evidence of future dangerousness,
21 ladies and gentlemen. The act itself. No expert here and
22 no one here can predict what this woman will do. They
23 tell you when they get to jail, they don't tell the guards
24 or anybody what she's in for. You don't think she can go
25 to the infirmary and handle other pregnant women, handle

1 people in her bunk mates, people that she could harm?
2 She's already shown you that she can.

3 He wants to talk about a hurricane
4 shortened to a timeframe of one year. We're talking 40 to
5 60 years that this woman will still be alive. You don't
6 think she's displayed the ability to harm somebody in the
7 future?

8 Try to marginalize her behavior in jail
9 now. That's what we're being accused of. We've looked at
10 the little things to show a consistent pattern. Even now
11 when she's caught in jail, awaiting trial, whatever rules
12 she can still break, she's still breaking them.

13 Her own people say, she has a history of
14 that. She's not going to change her stripes. Is she
15 going to do that automatically because you spared her?
16 No. She's never going to change her stripes.

17 I hope you never have to share the same
18 room with a murderer like you're doing here today.

19 Mariah. That's what this trial is really
20 about. That little girl. How can anybody who has been
21 with children, have children, work with children, do
22 something like that? When you're with a child. The
23 beautiful essence of being with a child. You've heard the
24 testimony. This wasn't a problem child, one that's crying
25 all the time. This is like the children that we deal with

1 everyday. Aren't they? The kind that you look at, that
2 you play with, and that you can't wait to be around.
3 That's what this trial is about. Her. No one else but
4 her.

5 Please consider that. Please don't ignore
6 that. The little girl was a fighter. Beat and beat.
7 Bones broken. Couldn't breathe. Her brain being
8 compressed into her spinal cord. And that little girl
9 still wanted to live on, until she finally couldn't.
10 That's what this trial is about.

11 You know, we talked about messages. And a
12 lot of times it brings us horror. But, it's not. This is
13 Cameron County. Beautiful Cameron County. Small towns.
14 Friday night football. Large families. Barbecues,
15 picnics. Kids. Cousins. Aunts, and uncles. And you
16 start looking at the paper in the news today, and all of
17 those problems that you think are big city are now coming
18 to our county. We don't take this lightly. One capital
19 murder. We're not asking for life. We don't take this
20 lightly.

21 We don't want this type of individual or
22 behavior in our county. And I think that you need to step
23 up and help us send that message. We have to stop it now.
24 We have to act with deliberation and we have to act
25 swiftly and put an end to it now. If we want to retain

1 our standard of life, our home -- the way we know it now,
2 the way it was known in the past, we have to stop it now.
3 I'm asking you to help me stop it. Thank you.

4 THE COURT: Ladies and gentlemen of the
5 jury, at this time all of the evidence, the arguments of
6 counsel and the charges together is before you. I'm going
7 to hand the verdict form to the bailiff that will escort
8 you back in the jury room. Once all of the members are
9 present and assembled, you may begin your deliberations.
10 Thank you very much.

11 THE BAILIFF: All rise for the jury if.

12 (Jury begins deliberation at 3:23 p.m.)

13 THE COURT: The Court is in recess until
14 the verdict is returned.

15 **(Recess from 3:23 p.m. to 5:27 p.m.)**

16 **(Jury present.)**

17 THE COURT: 07-CR-885-B, state of Texas
18 versus Melissa Lucio. Let the record reflect that the
19 defendant is present along with two counsel, that the
20 State along with the usual counsel is also being
21 represented. I have received a note from the jury that
22 they have reached a verdict. Bring the jury in, please.

23 THE COURT: Have you reached a verdict?

24 THE FOREPERSON: Yes, Your Honor.

25 THE COURT: Have you handed the verdict

1 form to the bailiff? Would you please hand the verdict
2 form to the bailiff. Mrs. Lucio, would you please stand
3 up to receive the verdict.

4 Special Issue Number One: "Do you find
5 from the evidence beyond a reasonable doubt that there is
6 a probability that the defendant would commit criminal
7 acts of violence that would constitute a continuing threat
8 to society? And the verdict is yes or no.

9 "We, the jury, find unanimously from the
10 evidence beyond a reasonable doubt that the answer to
11 special number one is: Yes."

12 Special Issue Number Two: "Taking into
13 consideration all of the evidence including the
14 circumstances of the defense, and defendant's character
15 and the background of the person's moral culpability of
16 the defendant, do you find there is sufficient mitigating
17 circumstances or circumstances to warrant that a sentence
18 of life in prison without parole rather than death
19 sentence be imposed? Your verdict, you will answer, yes
20 or no.

21 Answer: "We the jury unanimously find that
22 the answer to special issue number two is no."

23 We, the jury, in open court return in open
24 court and the same as our verdict in this case. You may
25 be seated. Yes, sir.

1 MR. VILLALOBOS: We just ask that you
2 accept the verdict.

3 THE COURT: I have received the verdict.
4 Ladies and gentlemen of the jury, you are now excused --

5 MR. GILMAN: Judge, I wish to poll the
6 jury.

7 THE COURT: Very well. Mr. Herminia Cruz,
8 is that your verdict?

9 A JUROR: Yes, sir.

10 THE COURT: Mrs. Irma Contreras Navarro, is
11 that your verdict?

12 A JUROR: Yes, sir.

13 THE COURT: Mr. Fernando Perez, is that
14 your verdict?

15 A JUROR: Yes, sir.

16 THE COURT: Mr. Johnny Galvan, is that your
17 verdict?

18 A JUROR: Yes, sir.

19 THE COURT: Alejandro Angel Saldivar?
20 Mr. Saldivar, is that your verdict?

21 A JUROR: Yes, sir.

22 THE COURT: Ms. Quintanilla, is that your
23 verdict?

24 A JUROR: Yes, sir.

25 THE COURT: Mr. Ernestina Espinoza, is that

1 your verdict?

2 A JUROR: Yes, sir.

3 THE COURT: And Mrs. Rosanna De Leon, is
4 that your verdict?

5 A JUROR: Yes, sir.

6 THE COURT: Mr. Rolando Gonzalez, is that
7 your verdict?

8 A JUROR: Yes, sir.

9 THE COURT: Mrs. Constance Poland, is that
10 your verdict?

11 A JUROR: Yes, sir.

12 THE COURT: Mrs. Gloria Garcia, is that
13 your verdict?

14 A JUROR: Yes, sir.

15 THE COURT: Mr. Ramiro Vargas Ramos, is
16 that your verdict?

17 A JUROR: Yes, sir.

18 THE COURT: Ladies and gentlemen of the
19 jury, you are excused from jury service. You may now
20 choose to talk to people or not talk to people. That's
21 your prerogative. You don't have to talk to anybody if
22 you don't want to. And you may do so, if you want to.
23 That's totally within your purview. Nobody can make you
24 talk if you don't want to. And if you choose to, then you
25 are more than welcome to.

1 I would ask that you please meet back in
2 the jury room just for a minute, but you are excused from
3 the instructions that this Court has given hereto.

4 THE BAILIFF: All rise for the jury.

5 (Jury exits at 5:30 p.m.)

6 THE COURT: This Court is in recess until
7 further orders.

8 (Proceedings adjourned at 5:33 p.m.)
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1 THE STATE OF TEXAS:

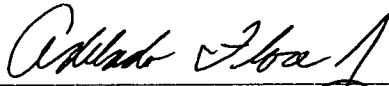
2 COUNTY OF CAMERON:

3 CERTIFICATE OF COURT REPORTER

4 I, ADELAIDO FLORES, JR, Official Court Reporter in
5 and ior the 138th Judicial District Court of Cameron
6 County, State of Texas, do hereby certify that the above
7 and foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-entitled, and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if
15 any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND on this the 15th day of
17 August, 2008.

18 
19 ADELAIDO FLORES, JR., Texas CSR
20 Official Court Reporter
21 138th District Court
22 974 East Harrison Street
23 Brownsville, Texas 78520
24 (956) 550-1489
25 Certificate No. 1117
Expiration Date: 12/31/08

Adelaido Flores, Jr.
Certified Shorthand Reporter